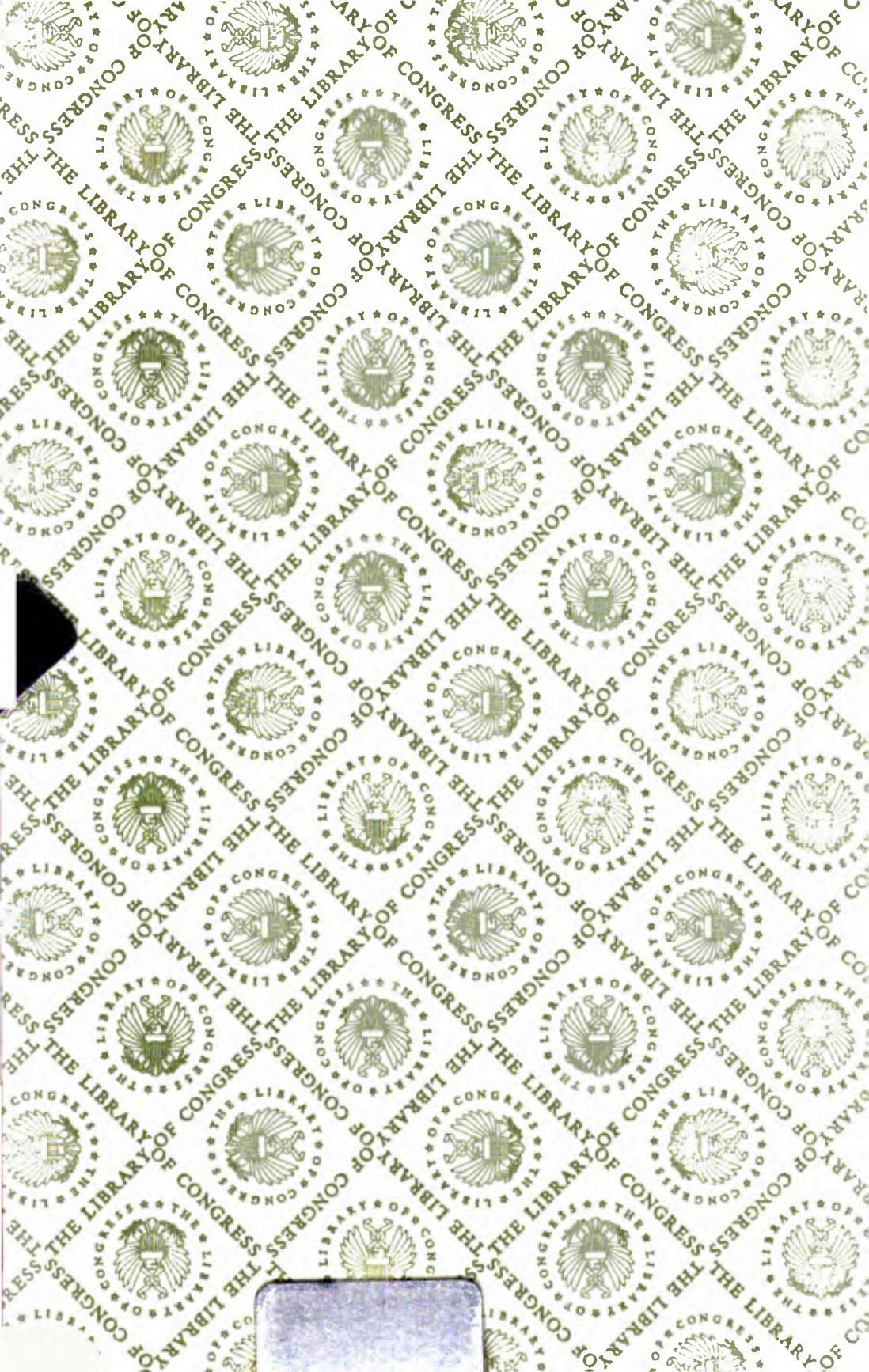
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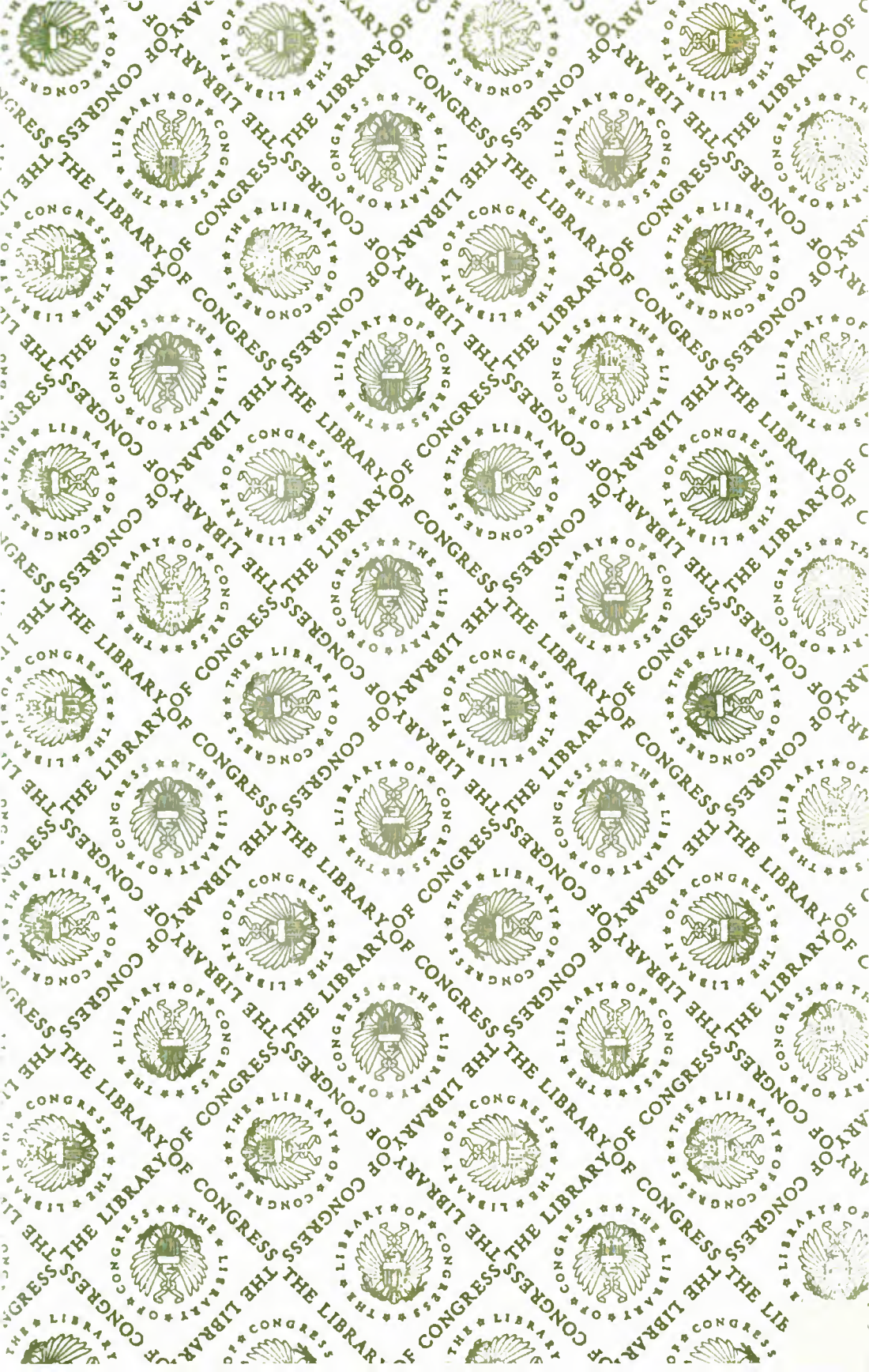
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PUTTING CONSEQUENCES BACK INTO JUVENILE JUSTICE AT THE FEDERAL, STATE, AND LOCAL LEVELS

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

MARCH 10 AND 11, 1999

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PUTTING CONSEQUENCES BACK INTO JUVENILE JUSTICE AT THE FEDERAL, STATE, AND LOCAL LEVELS

WEDNESDAY, MARCH 10, 1999

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m., in Room 2237, Rayburn House Office Building, Honorable Bill McCollum [chairman of the subcommittee], presiding.

Present: Representatives Bill McCollum, Lamar S. Smith, John Conyers, Jr., Robert C. Scott, and Sheila Jackson Lee.

Staff present: Paul McNulty, Chief Counsel; Dan Bryant, Counsel; Glenn Schmitt, Counsel; Veronica Eligan, Staff Assistant and Bobby Vassar, Minority Counsel.

OPENING STATEMENT OF CHAIRMAN McCOLLUM

Mr. MCCOLLUM. The Subcommittee on Crime will come to order.

The hearing today is on a very important subject, juvenile crime and the juvenile crime legislation. Today, notwithstanding the violent juvenile crime rate dropping over the last 3 years, which is good news, juvenile crime remains at unacceptably high levels. Indeed, it has more than doubled over the last three decades.

Teenagers account for the largest portion of all violent crime in America. Older teenagers, ages 17 to 19, are the most violent of all age groups. More murder and robbery is committed by 18 year old males than any other group, and more than one third of all murders are committed by offenders under the age of 21.

Simply and sadly put, today in America no population poses a larger threat to public safety than juvenile offenders, and given the demographic trends involved, the large youth cohort beginning to move through the crime committing age group of 15 to 24 years, many criminologists project juvenile crime may escalate substantially in the near future.

At the same time that we face the prospect of increased juvenile crime, juvenile justice systems around the country are overburdened and, therefore, unable to ensure appropriate interventions and sanctions for non-violent offenses. Their limited resources are understandably focused on the more serious and violent offenders. Consequently, many juvenile justice systems unwittingly send the message to first-time, non-violent offenders, the category of of-

fender that is most amenable to correction, that their wrongdoing doesn't matter.

In this way, many juvenile justice systems themselves are unintentionally contributing to the development of more hardened youthful offenders. Even with violent juvenile offenders, accountability is often lacking. Indeed, only 10 percent of violent juvenile offenders, those who commit murder, rape, robbery and assault, receive any sort of secure confinement. Rates of secure confinement for violent juveniles are the same as they were in 1985, and have actually decreased over the last 5 years. Many juveniles receive no punishment at all. Nearly 40 percent of violent juvenile offenders who come into contact with the justice system have their cases dismissed. By the time the courts finally lock up an older teenager on a crime of violence, the offender often has a long rap sheet with arrests starting in the early teens.

According to the Justice Department, 43 percent of juveniles in State institutions had more than five prior arrests, and 20 percent had been arrested more than ten times. In recent years, many States and localities have sought to address the lack of meaningful consequences for non-violent and violent offenders by implementing graduated sanctions. This approach seeks to ensure meaningful and proportionate sanctions for juvenile wrongdoing, beginning with the first offense, and believes that consequences for wrongdoing are in the best interest of the public and youthful offenders.

I hope to be introducing legislation in the near future that will assist States as they continue to embrace such accountability-based reforms. We'll be focusing specifically on such proposals during tomorrow's session, but today we focus on a different aspect of the juvenile justice reform, and that is, how can the Federal juvenile justice system be improved and strengthened so that it can serve as a model for the States? As is so often the case, we find the Federal Government having to play catch up with the States as they continue to move energetically forward with long overdue, common sense reforms. Once again, the States have provided us with a model, but if the Federal Government is going to participate in and contribute to the juvenile justice reform movement, then we must get our own house in order.

I want to make it clear that when we talk about reforming the Federal juvenile justice system, we are not talking about federalizing juvenile justice. I see no need for creating lots of new Federal crimes or delinquency offenses. The Federal juvenile justice system only deals with a few hundred juveniles a year, and I have not heard any compelling reason to date why that needs to change.

Rather, we are talking about simply updating what has become an antiquated system. There has not been a serious review and reform of many of the Federal juvenile justice procedures in Title 18 of the United States Code since they were first passed decades ago. The Justice Department has indicated in recent years that some of the procedures for proceeding against violent juvenile offenders in the Federal system are cumbersome. Also, there appear to be some gaps in the list of serious felonies for which a juvenile can be prosecuted as an adult in the Federal system. There are also questions about the efficacy of the reverse waiver procedure in current law.

These are just a few of the areas in the Federal juvenile justice system that may be in need of reform.

I believe that many of the Justice Department's proposals have merit, and I look forward to hearing about them this morning. Proposed reforms addressing these issues and a variety of others were passed twice by the House of Representatives in the last Congress by wide bipartisan majorities. I am hopeful we can do it again, only this time maybe we can get these reforms enacted into law.

I especially want to thank our witnesses for joining us today, notwithstanding the great snowstorm yesterday. Somebody wrote in my script, "blizzard," I do not think that was a blizzard, folks.

I was in Great Lakes Naval Training Center, and I had a lot more snow there, and I was in New England for the greatest snowfall in history there, so that was not a blizzard.

With that in mind, though, Mr. Scott, I yield to you for any opening remarks you may have, and I want to say at the beginning, this is our first hearing as a subcommittee, and it is a pleasure to have you as our ranking member. I think it is a good time for us to team up and do some things together, and we have talked about it, so welcome to that position. We are happy to have you.

Mr. SCOTT. Well, thank you, Mr. Chairman, and thank you for calling this hearing to discuss juvenile justice policy considerations. I am pleased again to serve on the Subcommittee on Crime, and honored to have been elected by my Democratic colleagues as their ranking member for the subcommittee. And, as you mentioned, we have had discussions and we look forward to coming up with some bipartisan solutions to very difficult problems.

In my 20 plus years of public service, one of the issues I have been most concerned about being effectively addressed is crime. During the three terms I have served in the Congress, I have seen an unprecedented effort by the Federal Government to interject itself into the issue—so much so that we now have a number of reports, as well as organizations and individuals, who are questioning the Federal Government's role in crime policy. The report from the study led by former US Attorney General Edwin Meese, another report to the Federal Judiciary Council by Chief Justice Rehnquist, Families Against Mandatory Minimum Sentences, family members and supporters of Kemba Smith in my district, to name a few, are all questioning the role of the Federal Government in crime policy. From the 1994 crime bill to the Juvenile Accountability Incentive Block Grant, billions of dollars have been spent to address crime, including juvenile crime, in traditional ways. However, precious little has been spent in the way we approach medicine, education, business, farming and most everything else—by researching and studying the issue and applying the conclusions from that research and study.

So, Mr. Chairman, I believe it is time we re-examine the role of the Federal Government in crime policy. With billions of dollars having been spent just since we have been here, before we spend a lot more doing the same things, I think it is high time that we take a look at what, if any, good it has done, and, Mr. Chairman, I look forward to working with you and the other members of this subcommittee in bringing about an examination of our role in crime policy, including juvenile crime policy, and I believe these 2

days of hearings offer such an opportunity and so I again, thank you for introducing these witnesses.

Over the past two Congresses, we have been engaged in a debate on what to do to reduce and prevent juvenile crime in communities across this country. As a member of the House Judiciary Committee and the House Education and Workforce Committee, which have the joint responsibility for development of juvenile justice policy, I have had more of an opportunity than most members to participate in this debate, and various policy options which have been considered. What I have concluded from all these debates is that it really boils down to a matter of choice for members. You can reduce crime or you can play politics—but you cannot do both. So far, we have chosen to play politics.

For years now, we have seen that the best politics of crime, including juvenile crime, is to talk and act tough. Prosecute fourth graders as adults, lock'em up with adults, execute 16 year olders, and deny the appeals to those sentences. So far, the winning strategy for juvenile crime policy boils down to a single poll-tested, vote-getting slogan—"ya' do the adult crime, ya' do the adult time." To be identified with that popular soundbite, we have been as willing in the Congress, as politicians all over the country have been, to write out decades of juvenile justice policy development, and mountains of empirical research. Yet, all the research shows that trying and locking up children as adults produces shorter incarcerations, higher recidivism rates and more violence, sooner, when compared to trying and addressing those offenses in the juvenile system. That's right—the research shows that children affected by these laws will serve less time in the adult system than they would in the juvenile system. So, if your goal is to hold juveniles longer, and if you want to see less recidivism and less violence, you do not want more children treated as adults.

When you think of it, the reason is clear. In Virginia, for example, a child with a first time burglary offense who has frequently been in court for skipping school, underage drinking and curfew violations and who has been way behind in school, would be a slam-dunk candidate on first offense burglary for Beaumont, or one of the State's other juvenile facilities, for 6 months to a year. On the other hand, if the child is treated as an adult, this will be a first offense which would call for probation under the Virginia sentencing system. And if he does go to prison, he would be housed with adult robbers, rapers and drug dealers who will be his friends and role models, instead of going to a juvenile facility where mandatory schooling, training and counseling will be the order of the day.

The tragedy in choosing such soundbite policies over sound policies is that we actually know what works to reduce juvenile crime. We know that early childhood programs like Head Start, after-school programs, recreation programs such as Boys and Girls Clubs, guarantee access to college, Job Corps and other youth job training programs, drug courts and other drug rehabilitation programs, just to name a few, when administered to at-risk children, have all been proven to reduce crime.

We also know that many of these programs save more money than they cost. Head Start saves $3.00 for every $1.00 spent by re-

ducing remedial education requirements, welfare dependency and crime. Job Corps saves over $1.50 for every $1.00 spent by increasing employment and reducing crime. Drug rehabilitation programs, in general, have been shown to save $7.00 to $10.00 in reduced crime and health care expenses. Drug Court studies have found that recidivism was six times higher for those that went to jail, as opposed to those who received rehabilitation, and the rehabilitation costs of the more effective policy was about 10 percent of the lock-em-up strategy.

So, we know that prevention and treatment strategies reduce crime and save money. But that is hard to explain in a 30-second soundbite, whereas, popular slogans need no explanation. Over the next 2 days, we have an impressive list of witnesses who will provide us with a full range of policy considerations based on their observations and the developed research in their fields of expertise. I believe their expertise, and the research and documentation that supports it, will serve us much better as a basis for sound policies than the politically popular soundbites.

So, thank you, Mr. Chairman. I look forward to the testimony from our witnesses and to working with you in this Congress to develop a juvenile justice system that makes sense and one that we can all be proud to support.

[The prepared statement of Mr. Scott follows:]

PREPARED STATEMENT OF HON. ROBERT C. SCOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Thank you, Mr. Chairman, for calling this hearing to discuss Juvenile justice policy considerations. I am pleased again to serve on the Subcommittee on Crime,, and honored to have been elected by my Democratic colleagues as their Ranking Member for the Subcommittee.

In my 20+ of public service, one of the issues I have been most concerned about being effectively addressed is crime. During the 3 terms I have served in the Congress, I have seen an unprecedented effort by the federal government to interject itself into the issue—so much so that we now have a number of reports, as well as organizations and individuals, who are questioning the federal government's role in crime policy. The report from the study led by former U.S. Attorney General Edwin Meese, another report to the Federal Judicial Council by Chief Justice Rehnquist, Families Against Mandatory Minimum Sentences, family members and supporters of Kemba Smith in my district, to name a few, are all questioning the role of the federal government in crime policy. From the 1994 crime bill to the Juvenile Accountability Incentive Block Grant, billions of dollars have been spent to address crime, including juvenile crime, in traditional ways. However, precious little has been spent in the way we approach medicine, education, business,, farming and most anything else—by researching and studying the issue and applying the conclusions from that research and study. So!, Mr. Chairman,, I believe it is time we reexamine the role of the federal government in crime policy. With billions of dollars having been spent just since we've been here, before we spend a whole lot more doing the same things, I think it's high time we take a look at what , if any, good it has done, and Mr. Chairman, I look forward to working with you and the other members of this Subcommittee in bringing about an examination of our role in crime policy, including juvenile crime policy, and I believe these 2 days of hearings offer such an opportunity and so I again, thank you for introducing these witnesses.

Over the past two Congresses, we have been engaged in a debate on what to do to reduce and prevent juvenile crime in communities across this country. As a Member of the House Judiciary Committee and the House Education and Workforce Committee,, which have the joint responsibility for development of juvenile justice policy, I have had more opportunity than most members to participate in this debate, and various policy options that have been considered. What I have concluded from all these debates is that it really boils down to a matter of choice for members. You can reduce crime or you can play politics but you can't do both. So far, we have chosen to play politics.

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When you think about it, the reason is clear. In Virginia, for example, a child with a first time burglary offense who has frequently been in court for skipping school, underage drinking and curfew violations and who is behind in school, is a slam-dunk candidate for Beaumont, or one of the state's other juvenile facilities, for 6 months to a year. On the other hand, if the child is treated as an adult, this will be a first offense which would call for probation under the Virginia sentencing system. And if he did go to prison, he would be housed with adult robbers, rapists and drug dealers who will become his friends and role models, instead of going to a juvenile facility where mandatory schooling, training and counseling are the order of the day.

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So, we know that prevention and treatment strategies reduce crime and save money. But that's hard to explain this in a 30-second soundbite. Popular slogans need no explanation. Over the next 2 days, we have an impressive list of witnesses who will provide us with a full range of policy considerations based on their observations and the developed research in their fields of expertise. I believe their expertise, and the research and documentation that supports it, will serve us much better basis for sound policies than politically popular sound*bites*.

So thank you, Mr. Chairman. I look forward to the testimony from our witnesses and to working with you in this Congress to develop a juvenile justice system that makes sense and one that we can all be proud to support.

Mr. MCCOLLUM. Thank you very much, Mr. Scott.

Mr. Smith, or Ms. Jackson Lee, do either of you have any opening statements?

Mr. SMITH. I do not, Mr. Chairman.

Mr. MCCOLLUM. Thank you.

Ms. Jackson Lee?

Ms. JACKSON LEE. Mr. Chairman, I would just ask unanimous consent that my opening statement be submitted in the record, and thank you for having this hearing, along with Ranking Member Scott, and indicate my concern. I chair the Congressional Children's Caucus, who has great concern in promoting children's issues, that we do need to be reminded of the Rand study that was authored about a year or two ago that did emphasize the value of prevention. I hope the administration will, in its rush to create pu-

nitive measures, be more sensitive to the idea that juveniles are rehabilitatable, if you will, can be rehabilitated, and, in fact, that we should focus our efforts in collaboration with our States and local governments, and educational facilities, to emphasize rehabilitating our young people, giving them an opportunity to have a good and better life.

And, I yield back. Mr. Chairman, thank you for your kindness.

Mr. MCCOLLUM. Your statement will be admitted into the record without objection.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF HON. SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

We are here to address the issue of juvenile crime. In my opinion, we need a balanced approach that encompasses both punishment and prevention.

When the juvenile justice system was first conceived, it emphasized rehabilitation for young offenders. Today, some advocate that the need for a separate system of juvenile justice has passed. However, I believe that we still need a system that recognizes the differences between children and adults.

Any legislation that we consider should combine measured punishment, treatment and counseling to keep our children within the fold of responsible, law-abiding citizens.

The total number of juvenile arrests declined in 1997. Law enforcement agencies arrested approximately 2.8 million juveniles. The juvenile violent crime rate declined 23% from 1994 to 1997. Thus, only 12% of all Violent Crime Index Offenses committed by juveniles—specifically 8% of murder, 11% of rape, 17% of robbery and 12% of aggravated assault were cleared by arrest.

Also in 1997, the murder rate was the lowest in 30 years. There were only 407 arrests for every 100,000 youth for violent crime. Thus the juvenile portion of the crime problem decreased in that year. This is good news.

However, there are still more statistics on juvenile crime patterns that should be noted. In 1997, about 2100 of the murder victims were younger than 18. 900 of those victims were younger than 13.68% of these victims were killed with a firearm.

Other statistics show that children between the ages of 12 and 17 are more likely to encounter violence. This experience of being victimized by crime has been found to increase a child's inclination to commit crime.

The number of arrests for females younger than 18 increased between 1993 and 1997. There were approximately 748,000 girls arrested in 1997.

African Americans are disproportionately represented in the juvenile justice system and account for 26% of juvenile arrests, 32% of delinquency referrals to juvenile court, 41% of juveniles detained in delinquency cases, 46% of juveniles in secure correctional facilities and 52% of juveniles transferred to adult criminal court. African American youth are twice as likely to be arrested and seven times as likely to be placed in a detention facility as white youth.

The factors that contribute to minority overrepresentation include bias in the juvenile justice system, inadequate education, poor socioeconomic conditions and unstable families.

While these statistics suggest that the once predicted increase in youth violence is no longer a grave threat, we must address the serious issue of juvenile crime through prevention. We must enact stiff penalties for repeat violent offenders, but we must not forget the needs of other youth who can be rehabilitated through means other than punishment.

Early prevention programs can offset juvenile crime. These programs emphasize the importance of better education, job training, recreation activities and mentoring. For every child we fail to provide these programs, we create the foundation for another juvenile offender.

We must encourage judges, not prosecutors to determine the penalties of young offenders. Prosecutorial discretion places children as young as 13 at risk for being tried as adults. Children tried as adults go on to commit more serious crimes after release. Also the records of juvenile offenders who are tried as adults should not be made available because this inhibits rehabilitation.

We must also protect children from adults who are also incarcerated. Children housed in the same facilities as adults are at serious risk for rape, assault, and even murder. Juveniles in adult jails are five times more likely to be sexually assaulted,

twice as likely to be beaten by staff and 50 times more likely to be attacked by a weapon than in a juvenile facility.

Children housed with adults are more likely to become career criminals. Adult facilities do not offer adequate rehabilitation or education programs necessary to reform young offenders.

I believe that we need to enact a juvenile justice bill that will in some way punish the most violent offenders, but will also focus on prevention of juvenile crime. We can prevent juvenile crime by providing positive role models; encouraging the development of self esteem; providing supportive relationships with others; expressing a sense of hope for the future; building strong social skills; and by encouraging the belief that a child can control his or her own destiny.

If we provide the care, support and appropriate discipline early, we will not lose a generation of children to crime.

Mr. MCCOLLUM. Today, I am pleased to introduce the first panel of witnesses we have.

Our first witness this morning is Mr. Kevin DiGregory, Deputy Assistant Attorney General in the Criminal Division of the United States Department of Justice. Mr. DiGregory set the record last Congress for the most appearances as a witness before the Crime Subcommittee. Thank you for your continued service to the subcommittee this morning.

Mr. DiGregory began his prosecutorial career in the District Attorney's Office in Pittsburgh, Pennsylvania. Prior to coming to the Justice Department, he served as Janet Reno's Chief Assistant for Major Crimes in Miami, Florida. Mr. DiGregory currently has responsibilities including serving as the department representative on the Working Group for Federal, State and Local Prosecutors. He also supervises two of the Criminal Division's litigating sections, the Computer Crime and Intellectual Property Section and the Child Exploitation and Obscenity Section.

Joining Mr. DiGregory this morning is United States Attorney Sherry Scheel Matteucci. Ms. Matteucci will not be making a statement, as I understand it, but will be available to answer any questions the subcommittee may have.

In 1993, Ms. Matteucci was appointed by President Clinton to serve as United States Attorney for the District of Montana. In November 1994, she was appointed by United States Attorney General Janet Reno to serve on the Attorney General's Advisory Committee. She is a member of the Advisory Committee's Subcommittee on Civil Rights, Border Enforcement, Environmental Crimes and Domestic Terrorism, and chairs the Subcommittee on Native American issues.

Prior to her appointment by President Clinton, she was a partner in the Billings law firm of Crowley, Haughey, I am not sure if I pronounced that right, Hansen, Toole and Dietrich. She graduated with honors in 1979 from the University of Montana School of Law. I understand Ms. Matteucci is responsible for bringing the Montana weather with her today, I am not sure if that is true, but, nonetheless, I have a feeling that there is a little bit more snow out in your country than it is our's.

If you would please join us, Mr. DiGregory and Ms. Matteucci, we'd be grateful for that.

I must add that Dietrich is a name I am familiar with, but I don't have the Haughey or Haughey down right, which is it?

Ms. MATTEUCCI. Haughey.

Mr. MCCOLLUM. Haughey, Haughey, all right.

Ms. MATTEUCCI. Irish.

Mr. MCCOLLUM. It is, I should know that. I'm Scotch-Irish, but I did not quite have that one down.

Mr. DiGregory, you may proceed with your statement or summarize it as you see fit.

STATEMENT OF KEVIN DiGREGORY, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. DIGREGORY. Thank you, Mr. Chairman and members of the subcommittee. I'm very happy to be here, although I must say I'd be happier to be tobogganing or sled riding with any one of my children this morning in the beautiful snow that we have out there.

As in the past, we do look forward to working cooperatively with this subcommittee to fashion legislation that will enhance the quality of justice in America. In view of our understanding that you wish today's hearing to focus on how Federal procedures for prosecuting juveniles as delinquents or as adult criminals can be improved, as well as on other enforcement aspects of juvenile justice legislation, my statement will concentrate on these areas. But, as you know, the Department and the administration regard as an equally vital component of any legislation addressing juvenile crime—and one essential to our support—the management and provision of adequate resources aimed at preventing such crime. It is our hope and expectation that we will be permitted to furnish views, and to work closely with the subcommittee, on these matters as well, prior to any legislation being brought before the subcommittee for approval. We realize, however, that another committee may also go forward with legislation that addresses these subjects.

As the administration's bill in the 105th Congress reflected, juvenile justice requires a balanced approach—one that couples tough but fair sanctions to hold juveniles accountable for their conduct, with smart and effective prevention and early intervention measures.

Let me now outline some of the essential features of responsible juvenile justice legislation, as we see it, with respect to the procedures for handling juveniles accused of unlawful acts and other enforcement provisions.

Who should decide whether to prosecute a juvenile as an adult? Although it is the States, not the Federal Government, that handle the vast majority of juvenile adjudications and prosecutions, the Federal system has a role to play and it is important that its framework of laws in this area function equitably and efficiently. In this regard, the current Federal system falls short. Under present law, set forth in Chapter 403 of Title 18, United States Code, unless the juvenile is over the age of 16 and otherwise qualifies for mandatory transfer, the decision whether to permit a juvenile to be prosecuted as an adult is vested in a judge. Assuming the juvenile's alleged act qualifies as a basis for Federal adult prosecution, the Federal prosecutor must petition the court to "transferFE the juvenile for adult prosecution. There is a presumption in favor of juvenile adjudication. The court considers various factors set forth in the statute in deciding whether to grant the

transfer and while the government can appeal a denial of transfer, the decision is reviewable only for an abuse of discretion, making reversal difficult and relatively rare.

For several reasons, we believe the system needs improvement. First, as with every other charging decision, the determination whether to prosecute a juvenile as an adult should be made by a prosecutor, not a court, or at least the prosecutor's decision should be accorded greater weight. Federal judges, because of the relatively few juveniles coming into the Federal courts, often do not have the training or experience needed to make sound waiver decisions. Federal prosecutors on the other hand are regularly trusted to make decisions about which persons to charge and what charges to bring. Eleven States currently confer on prosecutors, in addition to or rather than courts, the authority to proceed against juveniles as adults. This system is particularly appropriate at the Federal level, where juveniles coming into the system are primarily serious and violent felony offenders, often involved in significant gang, drug or violent crime.

Second, there are serious practical problems with the current "transfer" system. The process, including time for appeal, is lengthy and can consume years. The juvenile ordered transferred to adult status is entitled to an interlocutory appeal and this not only has the effect, or can have the effect, of delaying justice in a single defendant case; but may also, because of speedy trial requirements in cases involving multiple defendants, some of whom are adults, force unwanted severances or multiple trials, with resultant burdens on victims and witnesses and on court resources.

Another practical problem caused by the present system arises when multiple actors are involved, some of whom are juveniles, and some of whom are adults. And, this practical problem concerns the question of appropriate comparative punishment. For example, if two actors are charged with trafficking in major quantities of drugs, with the leader of this drug gang being a juvenile and the other actor being a young adult, if the juvenile is not transferred for adult prosecution, disproportionate punishment may result.

In short, the current system is cumbersome and too often fails to adequately protect the public or to promote fairness. In our view, the system should be altered so that, in appropriate circumstances, the prosecutor alone determines whether to prosecute the juvenile as an adult. The prosecutor should have this sole responsibility when the actors are older juveniles, aged 16 and over, whose alleged offenses constitute serious violent or drug crimes. We do, however, believe that there should be an opportunity for judicial review of a prosecutor's decision to proceed against a juvenile as an adult where the crime alleged is not so serious an offense, or where the juvenile is less than 16 years of age. This feature, often referred to as a "reverse waiver," should, however, differ from present law in two important respects. First, the burden of persuasion should be on the juvenile and his or her counsel to demonstrate why adult prosecution is not in the interest of justice. Second, the government should have the opportunity for an expedited appeal if the court rules in the juvenile's favor. If the court rules in the government's favor, the juvenile should get review on appeal in the event he is convicted, thus removing a major obstacle to the

efficient administration of justice, particularly, again, in those cases involving adult and juvenile defendants.

These changes, in our view, would greatly enhance the fairness and effectiveness of the Federal juvenile system.

Other important aspects of a fair and effective system for prosecuting juveniles as adult criminals. Although giving prosecutors wider discretion to determine whether to proceed against juveniles as adults is perhaps the most significant change needed, other aspects of the system are also important and need to be strengthened. To begin with, the number of predicate offenses in current law for which a juvenile may be prosecuted as an adult is too limited. The list includes violent felonies, some substantive drug felonies, and a handful of firearms and explosive offenses. In the interest of public safety, the predicate crimes allowing adult prosecution should be expanded to include more drug felonies, such as conspiracies to engage in drug trafficking, as well as additional firearms and explosives offenses, such as violations involving thefts of firearms or explosives, and computer crimes of the type often committed by juveniles.

In addition, it is important to enhance the role of Indian tribes in the system. We believe that respect for the unique status of Indian tribes warrants enlarging the current "opt-in" requirement so that it applies to all native American juveniles aged 13–15 alleged to have committed crimes over which there is Federal jurisdiction solely by virtue of the commission of those crimes in Indian country.

Whether there should be an age threshold for adult prosecution and, if so, what that age should be, are also important questions to which the States have given widely varying answers. Federal law presently contains an age threshold of 13 for adult prosecution, and confines such prosecutions to fewer than ten violent felonies. While setting an age limit is admittedly somewhat arbitrary, and we are aware that some of the States either have no age limit or one lower than 13, we believe that 13 is a reasonable threshold for adult prosecution. However, unlike current law, we think that the predicate offenses authorizing adult prosecution applicable to those who have attained age 13 but not reached age 16, should be the same as those for older juveniles.

At present, the Federal system for adjudicating allegations of delinquency has several features that operate contrary to the interests of public safety, and we believe these features should be corrected by legislation. The time for bringing proceedings when the juvenile is detained before adjudication, currently 30 days, should be extended, and the exclusions in the Speedy Trial Act should be made applicable. This additional time is necessary to protect witnesses and evidence in cases involving multiple defendant prosecutions of both adults and juveniles, by ensuring that the proceeding against the juvenile does not take place before the trial of the adult defendants. There is no need for special speedy trial provisions for juveniles, because they are entitled to bail on the same basis as adults in the Federal system. The delinquency proceeding itself, now presumptively closed to the public, should also be made presumptively open. The maximum period for confinement upon adjudication of delinquency should be increased to 10 years or through

age 25, to give judges additional flexibility. Likewise, fines and supervised release, currently not sentencing options, should be available for adjudicated delinquents in addition to probation and confinement.

Detention and confinement of juveniles with adults is a complicated area in which simple rules are difficult to craft. In general, we support the principle in current Federal law that a juvenile alleged to be delinquent may not be detained in any facility in which the juvenile has regular contact with adult prisoners. However, once a juvenile adjudicated delinquent attains the age of 18, there should be flexibility to permit the juvenile to be placed with adults in a correctional institution. Likewise, we favor amending present law to permit juveniles adjudicated delinquent to be placed with adults in nonsecure community-based facilities in order to provide transition services for juveniles moving from detention to the community, and to enable juveniles to be housed in their home communities. This is very important to the successful reintegration of young offenders, who will need assistance with job placement, continuing education, and other services they can only obtain in their intended places of residence. In addition, both these changes would help protect younger juveniles from more aggressive 19 or 20 year olds who, although not prosecuted as adults, may be dangerous to younger and first-time detainees.

With respect to juveniles charged or convicted as adult criminals, we likewise believe the rules regarding commingling with adults should be made more flexible. For old juveniles, at least 16 years of age, charged with or convicted of serious crimes, the law, in our view, should permit placement with adults. This would serve two important interests. First, it would help safeguard other younger juveniles from more violent ones; and second, it would aid the Marshals Service and Federal prosecutors who have found great difficulty in locating suitable facilities for older and violent juveniles, and thus may often have to be housed in places far distant from families and communities.

Under current law, records of a first adjudication of delinquency are not, except for those where the act would constitute one of a very few enumerated felonies if committed by an adult, routinely sent to the FBI. This limited availability of juvenile records is a serious concern. Records of juvenile adjudications, as well as the fingerprints and photographs of juveniles adjudicated delinquents, should routinely be provided to the FBI and their disclosure permitted in the same manner as adult records. In addition, further disclosure of such records should be permitted if it were authorized under the law of the State in which the delinquency proceeding took place. This proposal would eliminate disparities in the treatment of records between the State and Federal Governments, and would facilitate the development of State systems of graduated sanctions by making it possible in every case for the court to take into account a juvenile's delinquent history when imposing sentence.

One of the most critical provisions in the present Federal statutory framework relating to juveniles is that Federal proceedings against juveniles, whether as juveniles or adults, should only be brought where the Federal prosecutor certifies that the State lacks

jurisdiction or declines to proceed, or that there is a substantial Federal interest in the case. It is imperative that any remedial legislation in this area preserve that principle. The States must remain the foremost enforcers of the laws applicable to juvenile offenders. Only when violations occur in areas of exclusive Federal jurisdiction, or where there is a clear Federal interest, ought the Federal Government intervene.

In addition to strengthening the procedures relating to adult prosecution of juvenile offenders, it is vital to enhance Federal laws that may be used against youths and youth gangs engaged in serious violent and drug offenses. One very important proposal in this regard is a gun ban for juveniles adjudicated delinquent for acts which, if committed by an adult, would constitute a serious violent or drug felony. This gun ban must include a provision that the "restoration" by a State of one's right to own a gun will only be recognized as valid for purposes of the Federal prohibition if the restoration has been conferred following an individualized determination that the person in question would not pose a threat to public safety.

Among other enforcement proposals, we also urge that any juvenile justice legislation reported by the Judiciary Committee include: a new offense punishing interstate travel to obstruct State criminal proceedings by force or bribery; amendments to facilitate car jacking prosecutions and amendments to eliminate the statute of limitations for certain murders; penalty increases for selling drugs to minors or near schools; and amendments making serious juvenile drug trafficking adjudications predicates under the Armed Career Criminal Act. Moreover, because Federal jurisdiction over youth gangs is especially significant with respect to Indian country and other areas of exclusive Federal jurisdiction, we anticipate suggesting additional proposals to combat the disproportionately high incidence of violent crime in Indian country.

Thank you, Mr. Chairman and members of the committee. Thank you, Mr. Scott.

That concludes my statement, and Ms. Matteucci and I will be pleased to try to answer any questions that you may have.

Mr. MCCOLLUM. Well, thank you very much. We have a vote in progress and have one immediately following it, so we will have a recess, and we'll be back to ask those questions.

Thank you very much.

[Recess.]

[The prepared statement of Mr. DiGregory follows:]

PREPARED STATEMENT OF KEVIN DIGREGORY, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. Chairman and members of the Subcommittee:

I am pleased to be here to present the views of the Department of Justice on issues relating to youth violence and the federal juvenile justice system. As in the past, we look forward to working cooperatively with the Subcommittee to fashion legislation that will enhance the quality of justice in America. In view of our understanding that you wish today's hearing to focus on how federal procedures for prosecuting juveniles as delinquents or as adult criminals can be improved, as well as on other enforcement aspects of juvenile justice legislation, my statement will concentrate on these areas. But as you know the Department and the Administration regard as an equally vital component of any legislation addressing juvenile crime—and one essential to our support—the management and provision of adequate resources aimed at preventing such crime. It is our hope and expectation that we will

be permitted to furnish views, and to work closely with the Subcommittee, on these matters as well, prior to any legislation being brought before the Subcommittee for approval. We realize, however, that another Committee also may go forward with legislation that addresses these subjects.

Beyond question, one of the most important public safety issues facing our country today is juvenile crime, particularly violent crime. At the same time, in considering solutions and legislative responses, we need to put the issue in perspective. After steadily increasing between 1987 and 1994, the rate of juvenile violent crime has declined significantly in recent years, with the rate in 1997 a full 23 percent lower than in the peak year of 1994. More specifically, although the incidence of violent juvenile crime remains too high, juvenile arrest rates for murder dropped over 40 percent from 1993–1997; for robbery, by 28 percent; and for weapons offenses, by 24 percent. Moreover, it is crucial to keep one salient fact in mind: in 1997 (as was also true for the previous twenty years), less than one-half of one percent of America's youth aged 10–17 were arrested for a violent crime. To be sure, federal and state juvenile justice systems must be ready to deal effectively with that small fraction of dangerous juvenile offenders, including those who band together in gangs to commit violent acts. Our justice system must also be prepared simultaneously to respond to the many more millions of young people who are at risk for delinquency but who can still be helped to become productive and law-abiding citizens.

It follows that, as the Administration's bill in the 105th Congress reflected, juvenile justice requires a balanced approach—one that couples tough but fair sanctions to hold juveniles accountable for their conduct, with smart and effective prevention and early intervention measures. We look forward to working with this Subcommittee to forge legislation that adopts this approach.

Let me now outline some of the essential features of responsible federal juvenile justice legislation, as we see it, with respect to the procedures for handling juveniles accused of unlawful acts and other enforcement provisions.

I. REFORMING THE FEDERAL JUVENILE JUSTICE SYSTEM.

A. Who should decide whether to prosecute a juvenile as an adult?

Although it is the states, not the Federal Government, that handle the vast majority of juvenile adjudications and prosecutions, the federal system has a role to play and it is important that its framework of laws in this area function equitably and efficiently. In this regard, the current federal system falls short. Under present law, set forth in chapter 403 of title 18, United States Code ("Juvenile Delinquency") unless the juvenile is over the age of 16 and otherwise qualifies for mandatory transfer, the decision whether to permit a juvenile to be prosecuted as an adult is vested in a judge. Assuming the juvenile's alleged act qualifies as a basis for federal adult prosecution, the federal prosecutor must petition the court to "transfer" the juvenile for adult prosecution. There is a presumption in favor of juvenile adjudication. The court considers various factors set forth in the statute in deciding whether to grant the transfer and while the government can appeal a denial of transfer, the decision is reviewable only for an abuse of discretion, making reversal difficult and relatively rare. *See, e.g., United States* v. *Juvenile Male #1*, 47 F.3d 68 (2d Cir. 1995).

For several reasons, this system is flawed. First, as with every other charging decision, the determination whether to prosecute a juvenile as an adult should be made by a prosecutor, not a court, or at least the prosecutor's decision should be accorded greater weight. Federal judges, because of the relatively few juveniles coming into the federal courts, often do not have the training or experience needed to make sound waiver decisions. Federal prosecutors on the other hand are regularly trusted to make decisions about which persons to charge and what charges to bring. Federal judges, by contrast, adjudicate charges once brought; they do not ordinarily have a role in determining whether to prosecute. Eleven states currently confer on prosecutors, in addition to or rather than courts, the authority to proceed against juveniles as adults. This system is particularly appropriate at the federal level, where juveniles coming into the system are primarily serious and violent felony offenders, often involved in significant gang, drug or violent crime.

Second, there are serious practical problems with the current "transfer" system. The process, including time for appeal, is lengthy and can consume years. The juvenile ordered transferred to adult status is entitled to an interlocutory appeal and this not only has the effect of delaying justice in a single defendant case; but may also, because of speedy trial requirements in cases involving multiple defendants, some of whom are adults, force unwanted severances or multiple trials, with resultant burdens on victims and witnesses and on court resources.

Another practical problem caused by the present system arises when multiple actors are involved, some of whom are juveniles, and concerns the question of appropriate comparative punishment. For example, if two actors are charged with trafficking in major quantities of drugs, with the leader being a juvenile and the other a young adult, if the juvenile is not transferred for adult prosecution, disproportionate punishment may result.

In short, the current system is unduly cumbersome and too often fails adequately to protect the public or to promote fairness. In our view, the system should be fundamentally altered so that, in appropriate circumstances, the prosecutor alone determines whether to prosecute the juvenile as an adult. The prosecutor should have this sole responsibility when the actors are older juveniles (age 16 and over) whose alleged offenses constitute serious violent or drug crimes. We do, however, believe that there should be an opportunity for judicial review of a prosecutor's decision to proceed against a juvenile as an adult, where the crime alleged is not so serious an offense or where the juvenile is less than 16 years of age. This feature, referred to as a "reverse waiver," should, however, differ from present law in two important respects. First, the burden of persuasion should be on the juvenile to demonstrate why adult prosecution is not in the interests of justice. Second, the government should have the opportunity for an expedited appeal if the court rules in the juvenile's favor. (If the court rules in the government's favor, the juvenile should get review only on appeal in the event he is convicted, thus removing a major obstacle to the efficient administration of justice, particularly in cases involving adult and juvenile defendants).

These changes, in our view, would greatly enhance the fairness and effectiveness of the federal juvenile justice system.

B. Other important elements of a fair and effective system for prosecuting juveniles as adult criminals.

Although giving prosecutors wider discretion to determine whether to proceed against juveniles as adults is perhaps the most significant change needed for the current federal juvenile justice system, other aspects of the system are also important and need to be strengthened. To begin with, the number of predicate offenses in current law for which a juvenile may be prosecuted as an adult is too limited. The list includes violent felonies, some substantive drug felonies, and a handful of firearms and explosives offenses. In the interests of public safety, the predicate crimes allowing adult prosecution should be expanded to include more drug felonies (such as conspiracies to engage in drug trafficking), as well as additional firearms and explosives offenses (such as violations involving thefts of firearms or explosives) and computer crimes of the type often committed by juveniles.

In addition, it is important to enhance the role of Indian tribes in the system. At present, Indian tribes have no say in federal prosecutors' decisions whether to prosecute a Native American juvenile as an adult for an act that is a federal offense only because it occurred in Indian country, except where the juvenile is 13 or 14 years of age and charged with one of a very few crimes. In this limited class of cases, current law provides that a prosecution cannot go forward unless the tribe has previously furnished its written approval to the application of federal juvenile law to 13 and 14 year olds subject to its criminal jurisdiction. We believe that respect for the unique status of Indian tribes warrants enlarging this "opt-in" requirement so that it applies to all Native American juveniles aged 13–15 alleged to have committed crimes over which there is federal jurisdiction solely by virtue of their commission in Indian country.

Whether there should be an age threshold for adult prosecution and, if so, what it should be are also important questions to which the states have given widely varying answers. Federal law presently contains an age threshold of 13 for adult prosecution, and confines such prosecutions to fewer than ten violent offenses. While setting an age limit is admittedly somewhat arbitrary, and we are aware that some states either have no age limit or one lower than 13, we believe that 13 is a reasonable threshold for adult prosecution. However, unlike current law, we think the predicate offenses authorizing adult prosecution applicable to those who have attained age 13 but not reached age 16 should be the same as those for older juveniles.

C. Improvements to the juvenile delinquency adjudication system.

At present, the federal system for adjudicating allegations of delinquency has several features that operate contrary to the interests of public safety which should be corrected by legislation. The time for bringing proceedings when the juvenile is detained before adjudication, currently 30 days, should be extended, and the exclusions in the Speedy Trial Act should be made applicable. This additional time is nec-

essary to protect witnesses and evidence in cases involving multiple defendant prosecutions of both adults and juveniles, by ensuring that the proceeding against the juvenile does not take place before the trial of the adult defendants. There is no need for special speedy trial provisions for juveniles, because they are entitled to bail on the same basis as adults in the federal system. The delinquency proceeding itself, now presumptively closed to the public, should also be made presumptively open. The maximum period of confinement upon adjudication of delinquency should be increased to ten years, or through age 25, to give judges additional flexibility. Likewise, fines and supervised release, currently not sentencing options, should be available for adjudicated delinquents in addition to probation and confinement.

D. Detention and confinement of juveniles with adults.

This is a complicated area in which simple rules are difficult to craft. In general, we support the principle in current federal law that a juvenile alleged to be delinquent may not be detained in any facility in which the juvenile has regular contact with adult prisoners. However, once a juvenile adjudicated delinquent attains the age of 18, there should be flexibility to permit the juvenile to be placed with adults in a correctional institution. This is consistent with state requirements under the Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. §5601, *et seq.* Likewise, we favor amending present law to permit juveniles adjudicated delinquent to be placed with adults in nonsecure community-based facilities in order to provide transition services for juveniles moving from detention to the community, and to enable juveniles to be housed in their home communities. This is very important to the successful reintegration of young offenders, who will need assistance with job placement, continuing education, and other services they can only obtain in their intended places of residence. In addition, both these changes would help protect younger juveniles from more aggressive 19 or 20 year olds who, although not prosecuted as adults, may be dangerous to younger and first-time detainees.

With respect to juveniles charged or convicted as adult criminals, we likewise believe the rules regarding commingling with adults should be made more flexible. For older juveniles at least 16 years of age charged with or convicted of serious crimes, the law in our view should permit placement with adults. This would serve two important interests. First, it would help safeguard other younger juveniles from more violent ones; and second, it would aid the U.S. Marshals Service and federal prosecutors who have found great difficulty in locating suitable facilities for older and violent juvenile offenders (who are not legally considered "juveniles" in some states), and thus may often have to be housed in places far distant from their families and communities.

E. Availability of juvenile records.

Under current law, records of a first adjudication of delinquency are not (except for those where the act would constitute one of a very few enumerated felonies if committed by an adult) routinely sent to the F.B.I. This limited availability of juvenile records is a serious concern. In our view, records of juvenile adjudications, as well as the fingerprints and photographs of juveniles adjudicated delinquent, should be routinely provided to the F.B.I. and their disclosure permitted, in the same manner as adult records. In addition, further disclosure of such records should be permitted if it would be authorized under the law of the state in which the delinquency proceeding took place. This proposal would eliminate disparities in the treatment of records between the state and federal systems and would facilitate the development of state systems of graduated sanctions, which we support, by making it possible in every case for the court to take into account a juvenile's delinquent history when imposing sentence.

F. Federalism concerns.

One of the most critical provisions in the present federal statutory framework relating to juveniles is that federal proceedings against juveniles, whether as juveniles or adults, should only be brought (except for petty offenses committed on federal enclaves where there is an overriding interest in prompt disposition) where the federal prosecutor certifies that the state lacks jurisdiction or declines to proceed or that there is a substantial federal interest in the case. It is imperative that any remedial legislation in this area preserve this principle. The states must remain the foremost enforcers of the laws applicable to juvenile offenders. Only when violations occur in areas of exclusive federal jurisdiction, or where there is a clear federal interest (e.g., a computer hacking incident involving a federal agency's computers) ought the Federal Government intervene.

II. OTHER ANTI-GANG AND YOUTH VIOLENCE STATUTORY ENHANCEMENTS.

In addition to strengthening the procedures relating to adult prosecution of juvenile violent offenders, it is vital to enhance federal laws that may be used against youths and youth gangs engaged in serious violent and drug offenses. One very important proposal in this regard is a gun ban for juveniles adjudicated delinquent for acts that, if committed by an adult, would constitute a serious violent or drug felony. This gun ban must include a provision that the "restoration" by a state of one's right to own a gun will only be recognized as valid for purposes of the federal prohibition in 18 U.S.C. § 922(g) if the restoration has been conferred following an individualized determination that the person in question would not pose a threat to public safety by virtue of the restoration of the right to own firearms.

Among other enforcement proposals, we also urge that any juvenile justice legislation reported by the Judiciary Committee include: a new offense punishing interstate travel to obstruct state criminal proceedings by force or bribery (we note that title I of H.R. 2181, reported by this Subcommittee and which passed the House in the 105th Congress contained such a provision); amendments to facilitate carjacking prosecutions and to eliminate the statute of limitations for certain murders; penalty increases for selling drugs to minors or near schools; and amendments making serious juvenile drug trafficking adjudications predicates under the Armed Career Criminal Act. Moreover, because federal jurisdiction over youth gangs is especially significant with respect to Indian country and other areas of exclusive federal jurisdiction, we anticipate suggesting additional proposals to combat the disproportionately high incidence of violence in Indian country much of which is youth gang-related.

Thank you, Mr. Chairman. That concludes my statement and I will be pleased at this point to try to answer any questions.

Mr. MCCOLLUM. The Subcommittee on Crime will come to order. I want to thank everybody's indulgence during that vote, and I have a major committee voting on bills right now, marking up something, and that's early in the session, but I had to make that one vote.

Mr. DiGregory, do the Justice Department's proposals you've highlighted today in any way federalize juvenile justice?

Mr. DIGREGORY. Well, there are a couple of suggestions that we made, which would add offenses to the Federal arsenal. The one in particular that comes to mind, and there were not many, was one which would prohibit interstate travel for the purposes of intimidating witnesses. So, that would add to the Federal arsenal.

But, for the most part, Mr. Chairman, what we are talking about is merely trying to improve the system that already exists, and not to federalize crime. In fact, one of the points that I made during my statement, a couple of points, we recognize that the vast majority of these cases are going to be handled in State court, and we don't want the provision in the current law with respect to certifying that this case couldn't be handled in State court or with respect to certifying that there be a substantial Federal interest. We don't want that provision removed from current law.

Mr. MCCOLLUM. How many more juveniles do you——

Mr. SCOTT. Excuse me.

Mr. MCCOLLUM [continuing]. Yes, certainly, Mr. Scott, I'll yield to you.

Mr. SCOTT. Is your request to make those new juvenile offenses or make them new Federal offenses, generally for everybody?

Mr. DIGREGORY. Federal offenses.

Mr. SCOTT. Federal for everybody?

Mr. DIGREGORY. Yes.

Mr. SCOTT. Thank you.

Mr. MCCOLLUM. How many more juveniles do you think would be handled at the Federal rather than the State level each year, do you have any estimate?

Mr. DIGREGORY. I don't have an estimate for you.

Mr. MCCOLLUM. Do you think——

Mr. DIGREGORY. I can only tell you that currently there are approximately 200 juveniles who have been—over the last couple of years, I think there have been about 200 juveniles handled as adults in the Federal system, which amounts to about, if you average out with the US Attorney's offices, a little more than two per US Attorney's office.

Mr. MCCOLLUM. Do you or Ms. Matteucci have any idea how many more juveniles might be prosecuted as adults each year if we granted this change in the rules that you want?

Ms. Matteucci?

Ms. MATTEUCCI. I think there would be some additional opportunity for evaluation of prosecution as adults. I do not believe there would be necessarily a substantial increase in the number adjudicated in that way.

Mr. MCCOLLUM. Can you give us a sense of the typical delinquency case handled in the Federal court, versus the typical criminal case involving a juvenile?

Ms. MATTEUCCI. As you know, Mr. Chairman, much of the Federal juvenile crime arises in the Indian country, and US Attorneys in those districts with Indian country act, essentially, as State prosecutors, and so there are many, many cases involving, for example, low-level drug distribution, burglaries, vandalism of various kinds and characters that are resulting in adjudication as delinquents.

It's only the most violent offenses that are sought to be prosecuted as adult offenders, and not all of those result in certification for adult status.

Mr. MCCOLLUM. I'm curious, Mr. DiGregory, about your comments on the ability of the Federal Government to prosecute a juvenile as an adult if he or she is 13 or older. There are critics of the Federal system, because they say it's too low, you know, a lot of States have it at 14 or 15, do you have more that you can tell us than you've got in your testimony about why we should keep it there? Maybe we should raise it.

Mr. DIGREGORY. I really don't have anything more to tell you, except that any time you select an age as a cut-off for prosecution or for prosecution of certain offenses, you are making, to a certain extent, an arbitrary decision.

But, as I have noted in the testimony, many States do not have an age limit, many States have an age limit that is lower than 13. I can't provide to you any further insight than that.

Ms. MATTEUCCI. I think it's appropriate because the teenage years are, both statistically and realistically, the years in which most pressures and changes in circumstances facing young people, is when junior highs are in place and moving on into high school.

Mr. MCCOLLUM. Well, do we have any knowledge of how many of the 200 or so that are prosecuted in the Federal system, the juveniles each year, are 13, or were 13 last year, or 14 I should say?

Ms. MATTEUCCI. Very few. I don't believe we have a specific number, Mr. Chairman.

Mr. MCCOLLUM. Or 400, however many, my staff is saying 400 were handled in the juvenile system last year. Well, if you could help us by getting that statistic, that would be very good for us to have.

Then the other question I have is, right now in a delinquency proceeding it's presumptively closed to the public. Do either of you have a view as to whether it should be presumptively open to the public, or should we leave the law as it is?

Ms. MATTEUCCI. It's our view that juvenile proceedings involving serious offenses ought to be presumptively open to the public, and there are a couple of reasons for that. One is that, as the committee is well aware, we are all trying to address more effectively the interests of victims of crime, and the victims of juvenile crime ought to have the same sorts of opportunities as victims of adult crime. We also are trying to address the sense of the community related to the appropriate disposition of serious juvenile crime, and also to send a message to young people that there isn't a free pass on behavior until you are 18 years old or some other age, but that serious violent, serious crime will create serious consequences.

Mr. MCCOLLUM. I certainly concur with that latter statement. I think that is a thrust that we need to have in the law for sure.

Mr. Scott, you are recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. DiGregory, you indicated that there were about 200 juveniles treated as adults in the Federal system?

Mr. DIGREGORY. It's about that number, yes, sir.

Mr. SCOTT. And, you said it was two per district, but, in fact, most districts don't have any, is that the fact?

Mr. DIGREGORY. I just told you what the average would be if you calculated it based upon the number of US Attorneys offices.

Mr. SCOTT. But, a lot of those are in areas where the Federal Government has sole jurisdiction, and a lot of jurisdictions would, in fact, have none.

Mr. DIGREGORY. I think there probably are districts which have none.

Mr. SCOTT. Well, do you know?

Mr. DIGREGORY. I don't know whether it's most districts, I was just pointing out that there are 94.

Mr. SCOTT. But of 200, the majority would be in a handful of jurisdictions.

Ms. MATTEUCCI. There are actually about 50 districts, Mr. Scott, that have significant Indian country responsibility, which would be more than half of the 94 districts in the country.

Mr. SCOTT. You indicated on the reverse waiver, the time for the appeal has been a problem.

Mr. DIGREGORY. Yes.

Mr. SCOTT. Why would the time for appeal be a problem on the reverse waiver and it's not a problem on the present presumption of juvenile status?

Mr. DIGREGORY. Well, the time for appeal is a problem under the present presumption with respect to juvenile status. It was a problem in a particular case.

Mr. SCOTT. But, why wouldn't it be a problem with the reverse waiver? Why wouldn't you have the same problem if the juvenile wants to appeal, he would appeal?

Mr. DIGREGORY. Well, because the proposal that we put forward is one which would not allow the juvenile to appeal until after.

Mr. SCOTT. After?

Mr. DIGREGORY. After the trial has taken place.

Mr. SCOTT. Do you have evidence to show that there is a value in treating more juveniles as adults than they are now?

Mr. DIGREGORY. I don't have any studies. I have experiences of United States Attorneys to relate. I have cases to relate, which suggest that the proposals that we make would be useful ones.

For example, in the District of Arizona not too long ago, a Navajo police officer was murdered, rather brutally murdered. Two individuals were charged with the offense. One was 17, and one was 18, I believe, at the time the crime was committed. The 17 year old was the more culpable of the two offenders, or at the very least the two offenders were equally culpable. The judge did not certify the 17 year old for treatment as an adult. That resulted, not only in a serious violent offender receiving a relatively insignificant sentence for a horrible crime, but it also resulted in a disparity in the punishment between the two offenders, because the second offender was subject to life in prison without possibility of parole after trial.

I don't have studies, but cases like that concern me greatly and concern the Department greatly.

Mr. SCOTT. You have one anecdote that shows that you disagreed with the judge's decision in that case. You are aware of studies that show that a significant portion of the juveniles treated as adults are treated as adults for non-violent offenses, you are not aware of any of those studies?

Mr. DIGREGORY. I'm sorry?

Mr. SCOTT. The study that shows that at least a third of the children treated as adults are treated as adults for non-violent offenses.

Mr. DIGREGORY. I am not aware of those studies, but that's not likely to happen with respect to our proposal because——

Mr. SCOTT. It's a Department of Justice study. And so that, you don't think enough juveniles are being treated as adults.

Ms. MATTEUCCI. May I comment, Mr. Scott?

Mr. SCOTT. Yes.

Ms. MATTEUCCI. It is not, from my point of view, our objective to increase the number of juveniles who will be treated as adult for prosecution purposes. It is our objective to increase the certainty with which violent offenses by juvenile offenders will be treated.

And, there are many circumstances where it would be advantageous for a juvenile to be treated as an adult. You've mentioned the non-violent offenses and how that plays into that statistical study, I don't think that it is an accurate conclusion to reach that treatment as an adult, for prosecution purposes, is a negative result for a juvenile offender.

Mr. SCOTT. Well, most of the studies show that the juveniles who will be affected by this will be likely to get 50 percent more time as a juvenile, and if treated as an adult be more likely to re-offend.

All of the studies are consistent with that. Do you have any evidence to the contrary?

Mr. DIGREGORY. I don't know of any studies, and I would like to point out, though, that with respect to the offenses that we are talking about, with respect to the Federal system, we are talking about the most serious violent offenders.

Mr. SCOTT. Well, you have just mentioned computer crimes. It's in a juvenile crime bill, do you expect computer hacking to be a Federal adult crime for juveniles?

Mr. DIGREGORY. Could be a Federal adult crime for juveniles, depending upon the damage that has been done by the juvenile who did the hacking.

Mr. SCOTT. Well, I have not seen the language in your recommendation.

Mr. Chairman, are we going to have a second round?

Mr. MCCOLLUM. Sure, if you like.

Mr. SCOTT. Thank you.

Mr. MCCOLLUM. Thank you.

Mr. Smith, you are recognized for 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. DiGregory, I just want to follow up on a couple questions that you've been asked, and answers that you have given.

As things stand right now, you say about 200 juveniles are being prosecuted as adults. You all are proposing changes to reduce, is that at the age of 16 or above when you say juveniles, of those 200 juveniles that have been prosecuted?

Mr. DIGREGORY. I cannot tell you what the ages of all of those juveniles are.

Ms. MATTEUCCI. Most, but not all.

Mr. SMITH. Most, what, 90 percent are 16 or above, something like that?

Ms. MATTEUCCI. It is difficult to put a number on it, but it is a relatively rare circumstance when a juvenile under 16 is——

Mr. SMITH. So, under 16 is rare. Then, you all are proposing to reduce the age, though, from 16 to 13, and allow juveniles age 13 or above to be prosecuted as adults for certain crimes, which are fewer than ten. What are those crimes, by the way?

Mr. DIGREGORY. They are—they include a broad range of gun and serious drug crimes, and they also, they include crimes like assault with intent to commit murder, murder, aggravated sexual abuse and sexual abuse, kidnaping, robbery, car jacking, extortion.

Mr. SMITH. What is your estimate now as to the number of juveniles aged 13 to 16 who have committed any of those, roughly, ten crimes? Is it in the hundreds, is it in the thousands, is it in the ten thousands across the country?

Ms. MATTEUCCI. On the Federal side?

Mr. SMITH. Yes.

Ms. MATTEUCCI. Maybe in the hundreds, not in the thousands, I would say. But, I'm talking about juvenile offenders who would not be picked up by the State system, which is preferable.

Mr. SMITH. Right, in the 13 to 16 age category.

Say that it is in the hundreds, how many of those do you anticipate, or would you expect to prosecute as adults, nearly everybody, or how many?

Ms. MATTEUCCI. Again, I don't know that we can put a number on it, but I would not say it would be nearly everybody.

Mr. SMITH. Would it be half, three quarters?

Ms. MATTEUCCI. I doubt if it would even be half, because what we are looking at is conduct of the offender, and consequence of the offense of the conduct.

Mr. SMITH. What I am trying to get at, let us say that it is somewhere below half, and the number is, as you said, several hundred, then you are going to end up with at least a minimum of 100, maybe 100 to 200 juveniles between the ages of 13 and 16 that will be prosecuted as adults, who would not otherwise be prosecuted, is that correct?

Ms. MATTEUCCI. I would not expect the number to be that high, no.

Mr. SMITH. Okay.

Well, if you wouldn't, you have to give me a basis for why you wouldn't expect it to be that high, if you can't give me percentages on any of the numbers I have asked for.

Ms. MATTEUCCI. Again, we don't know the number of juveniles who are going to commit the kind of conduct that would expose them to that prosecution.

Mr. SMITH. Okay. You used the figure several hundred are in that universe of individuals, 13 to 16, who might be prosecuted as adults for committing one of these ten crimes, and then you said that the individuals prosecuted would be—would not even be half, I don't know if it is a quarter, or a third, or something like that, but you don't know either.

Ms. MATTEUCCI. I do not know.

Mr. SMITH. So then, you have no basis to say that it is going to be a few or it is going to be a large number.

Ms. MATTEUCCI. I have the experience of dealing with juvenile crime and making decisions about what sorts of conduct and what sorts of individuals should be treated as adults.

Mr. SMITH. Based upon your experience then, what general percentage or fraction would it be of these several hundred that you think might be prosecuted as adults?

Ms. MATTEUCCI. Less than a quarter, would be my best guess.

Mr. SMITH. Okay. Well, if it is a quarter, then you are talking something like a range of 50 to 100, or something like that.

Ms. MATTEUCCI. Perhaps.

Mr. SMITH. Perhaps, okay.

Well, my point there, 50 to 100, if it is 200 a year before, and it ends up being 250 to 350 afterwards, that is not an insignificant increase. It may be a justified increase, it may be an increase that is necessary, but it is not an insignificant increase.

Would you agree or disagree that an increase from 200 to an average of 300, would you still say that is an insignificant increase?

Ms. MATTEUCCI. I would not.

Mr. SMITH. Okay. Thank you.

Thank you, Mr. Chairman.

Mr. MCCOLLUM. Thank you.

Mr. Conyers, would you like to ask some questions? We are joined today by the distinguished ranking member of the Full Committee.

Mr. CONYERS. Thank you, Mr. McCollum. I have a statement that I won't read.

Mr. MCCOLLUM. Without objection, it's admitted into the record.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF HON. JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Given the growing concern of American citizens over the juvenile crime problem, we need to carefully examine this issue and its root causes and look for ways not just to punish juvenile offenders, but for ways in which we can prevent children from becoming criminals in the first place.

Some of my colleagues believe that the very least we must do to address our juvenile crime problem is to lock up violent juveniles. I have no argument with incarcerating violent offenders, but to my mind, the *very least* we must do is to attempt to stop these kids *before* they become violent offenders.

Locking up more and more kids is not the answer. We cannot afford it and eventually these kids will get out. And what will happen when they do get out? We will have a group of young adults who have spent many of their formative years in jail. What can we logically expect them to have learned there except for how to be better and more dangerous criminals?

Yet now, in the current political climate where no penalty is ever considered too severe, many of my colleagues want to treat kids as adults and lock them up for longer and longer periods—even though study after study has shown that this approach is totally ineffective.

Traditionally, juvenile court judges have given juveniles longer sentences than the judges in adult courts. The worst offenders at the juvenile level may often appear quite tame compared to what the criminal courts see every day.

Anyway, all of the talk about treating younger and younger offenders as adults misses the point. It is too little too late. We need to deal with kids *before* they become violent offenders, not after. The Rand Corporation—hardly a bastion of liberalism—has recently issued a report demonstrating that crime prevention efforts aimed at disadvantaged kids are more effective than tough prison terms in keeping our citizenry safe.

As adults, we need to take more responsibility for our country's juvenile crime problem. Children are not born criminals, we make them into criminals either through our neglect or our mistreatment or a lack of economic opportunities.

We are treating juveniles more harshly at the same time as we are spending less on their education, less on after-school and development programs, and less on child protective services.

We are also allowing our children to be exposed to more and more violence, not only on television, at the movies and in popular music, but in the streets, at school and even in their own homes. A significant majority also refuses to stand up to the National Rifle Association and acknowledge the danger guns pose to our youth, despite the large number of teenagers (not to mention adults) killed by gun violence every year. Unfortunately, the Republican juvenile justice bills have done nothing to limit juvenile access to handguns and have been specifically crafted to avoid the possibility of amendments be offered on this issue.

Although the 1994 Crime Bill authorized funding for numerous prevention programs, since the Republicans gained the majority, none of that money has been appropriated. Therefore, it cannot be argued that prevention has failed. We haven't even begun to try prevention programs. Before we lose an entire generation to the criminal justice system, we have an obligation to make every effort to assist children in making the right choices and to offer them meaningful alternatives to crime.

This is the third consecutive Congress this Committee has taken up juvenile justice legislation. In the 104th Congress, the bill never get out of committee. Last Congress, we approved an extreme and counterproductive piece of juvenile justice legislation. Although it was able to pass the House floor, it was not supported by the Administration and died in the Senate. I hope that we can learn from these experiences and work together and pass a bipartisan bill that gives our children something to say yes to and can pass the Senate and be signed into law by the President.

Mr. MCCOLLUM. You are recognized for 5 minutes.

Mr. CONYERS. Mr. DiGregory and Ms. Matteucci, I come to this hearing disturbed by the fact that we have the highest incarceration rate of any industrial nation in the world, that one in four

African American males have some contact with the criminal justice system, that there is a great deal of disparity in how these matters are handled.

And, what I am looking for, and will be working with you on, is the fact that it is not clear that federalizing, there are some crimes we have to federalize, and, unfortunately, that number is expanding, even though I am not an advocate, generally, of federalizing everything that gains some attention or becomes publicity, and then someone says, well, let's make it Federal law.

So, I approach this Department of Justice view that you represent with some skepticism. The problem with youth in America is not how fast and swift you punish them, I mean the problem really is how do we try to keep them out of the system.

So, I am having some difficulty in jumping on this bandwagon. This is about the third Congress that we have been trying to get a juvenile justice bill through. There is an alternative bill, and your views do not seem to go along with the philosophy that I hold about crime in America, and young people in particular. It is not clear to me that we have juvenile facilities in the Federal system, or that we will. We are increasing the Federal industrial prison complex by even time funding on rates of conviction, and so we have an unusual situation in which crime rates, as a general proposition, are going down, but numbers of people incarcerated are going up.

And, because of all these reasons, it would seem to me to make more common sense to give more resources to the States to handle juvenile matters than to begin to assume an initial jurisdiction over it in the beginning.

We have had some proposals earlier that even wanted to put juveniles and adults in the same facility, and so this get tough on crime, lock-em up and throw away the key, extend mandatory minimum provisions, extend capital punishment, to me all seems to be going in the wrong direction, and you seem to be, in some respects, an exemplar of that proposition, and I want you to know how I don't like it, and plan to be talking with the Criminal Division of the Department of Justice about your testimony here today.

Now, how can you defend yourself so that I might change my mind on that in the next 2 minutes?

Mr. DIGREGORY. I would be happy to discuss these issues with you at any time, Mr. Conyers, and one of the most significant things that we are trying to do with this testimony and with this proposal is suggest that there does need to be a change in the juvenile justice system, a change which, if you will, alters the balance, so that a prosecutor, who would otherwise have discretion in putting together his cases when the serious violent offender an adult would have that discretion when the serious violent offender is a juvenile. A change, which presumes that the protection of the public is just as important as concern for the child who committed the offense, if not more important.

And, I share your concern that there needs to be—there need to be preventive measures, there needs to be intervention, but we also see the need for a measure such as this, which we believe will allow us to more effectively prosecute those serious violent offenders.

Mr. CONYERS. Well, just to—I am glad you suggested that we talk, because I was going to invite such an opportunity, but remember, State prosecutors already have waiver power, and protection of the public is not something, some new idea that just came out of the 104th, 105th or 106th Congress, I mean, that is fundamental.

So, all I can see is that we have got a lot of talking to do, and we have some witnesses, Chairman, McCollum, that are not able to be here, and I would like to consult with the ranking member in terms of whether maybe one or more of other witnesses that I would like to clear through both of you might be heard in the course of this hearing.

Mr. MCCOLLUM. We will certainly be glad to discuss that, Mr. Conyers.

Mr. CONYERS. Thank you very much.

Mr. MCCOLLUM. At the suggestion of Mr. Scott, I am going to take a second round of questions. I'll be brief and trust others will be too.

But, Mr. DiGregory, I want to ask you about your testimony that juveniles at least 16 years of age, who have been convicted of a serious crime, should be confined with adults because it would be a problem to confine them with other juveniles. Can you elaborate on that and tell us why you think that is true?

Mr. DIGREGORY. There is the potential for a harmful effect on less violent juvenile offenders, who are the same age, older, or, perhaps, younger than the 16 year old, 17 year old juvenile offender who is convicted of a violent offense. That is one possible problem that could arise with that particular violent juvenile's incarceration with other juveniles.

Mr. MCCOLLUM. Would it not be better to have the juvenile that is 16 or older, at least until they are 18, segregated from the adults in some way? In other words, if they are too serious a criminal to be put in with another juvenile—they are not 18, they are not adults yet—couldn't the system be adapted so they are simply not confined with either one, so you don't have them with adults, and you don't have them with less serious or younger people?

Maybe Ms. Matteucci could comment on that.

Ms. MATTEUCCI. I do think that care needs to be taken to ensure that the 16 to 18 year old category of offender is not exposed to unsafe detention or confinement conditions.

It would be possible, theoretically, to require, or permit, or assist juvenile facilities to develop a sort of a maximum security wing or policy. I think what we are looking for is a range of options that can be employed to find the best placement, the safest placement for an offender, and all with whom he will come in contact.

Mr. MCCOLLUM. Why should records of adjudications and the fingerprints of juveniles adjudicated delinquent be routinely sent to the FBI? Either one of you, Ms. Matteucci?

Ms. MATTEUCCI. I think they should be, because we have experienced a cultural shift in this country, where no longer is juvenile crime the kind of thing it used to be, with petty theft, and vandalism and so forth, and when you are dealing with violent offenses and the consequences of violent crime, that is relevant to an appropriate disposition currently for the offender and in the future. And,

I think it is relevant to make sure that society is as informed as it can be about the threats to its safety.

Mr. MCCOLLUM. You have testified, Mr. DiGregory, that the determination of whether to prosecute a juvenile as an adult should be made by the prosecutor and not by the court.

This seems to be the most important change you want, and I am grappling with it a little bit. Why is it so important?

Mr. DIGREGORY. It is important for a number of reasons, including the fact that many federal—well, including being able to deal with the case that I mentioned earlier that occurred in Arizona, and it is also important in order to allow Federal prosecutors to more effectively deal with multiple defendant cases, where juveniles and adults are involved, and where juvenile offenders have committed crimes as serious as adult offenders.

In those cases, which are handled in many prosecutors' offices around the country, and in many—some cases in particular that I am thinking of occurred in the southern district of New York, it can become a prosecutor's nightmare to have to divide his case by sending a juvenile to juvenile court, or being unable to send a juvenile to juvenile court, or being so concerned about the length of time it will take to certify a juvenile, to get a juvenile certified for prosecution, that in some instances prosecutions of certain juveniles aren't even pursued. Now, not the most violent ones, perhaps, but it presents a difficulty for the prosecutor in trying to put together his multiple defendant case, his multiple defendant gang case, which includes both juvenile and adult offenders.

Mr. MCCOLLUM. Thank you.

Mr. Scott?

Mr. SCOTT. Thank you, Mr. Chairman.

One of the problems I have with the testimony is, we have in Virginia about 250,000 major felonies, and this is the first opportunity you have had to come to present your initiatives to reduce crime, and you come up with a solution that is going to effect in Virginia a handful of cases, and it is just how those are tried, not anything to do that would have any measurable effect on crime.

In terms of evidence, do you have evidence to show that opening a trial for juveniles will have the effect of reducing crime?

Mr. DIGREGORY. I don't have any studies to that effect, nor am I aware of any.

Mr. SCOTT. Do you have any evidence to show that incarcerating juveniles with adults will have the effect of reducing crime?

Mr. DIGREGORY. I am not aware of any studies to that.

Mr. SCOTT. Are you aware of the studies that show that incarcerating juveniles with adults will increase crime?

Mr. DIGREGORY. I am not aware of those studies.

Mr. SCOTT. In terms of the records, that two aspects of the secrecy of the records, one is whether or not those records ought to be shared amongst agencies, the other whether or not the records are publicly available, is there a problem with juvenile records in that in juvenile court you have a situation where the nature of the crime, the title of the crime, really does not reflect the behavior? For example, extortion could be talking somebody out of their lunch money, if that is recorded as a reportable crime it would be misleading. Would that be a problem if you try to have the FBI records

get to juvenile records, and is there a problem with records being open in terms of publicity?

Mr. DIGREGORY. I think if it is a problem, it is a problem that the careful and thorough prosecutor will effectively deal with. I think that the prosecutor will want to look behind the offense. I mean, I have prosecuted a lot of cases, Mr. Scott, and I can only tell you that I always, not only wanted to look at the rap sheet, I wanted to look at the certified copy of the conviction, and I wanted to look behind the conviction to see what the facts were which led to the conviction, before I made a judgment about, [A] going forward with the prosecution, or [B] what recommendations to make at sentencing.

Mr. SCOTT. So, when you looked at a record, you looked behind the record in terms of prior offenses, not the offense——

Mr. DIGREGORY. Prior offenses is what I am talking about.

Mr. SCOTT. So, if someone had a school lunch situation and extorted money, you would not look at that as a prior offense of extortion?

Mr. DIGREGORY. I think it would be—it would be, you would have to consider the facts of that case and wonder whether that cased warranted—should be a significant factor in your decision-making process, whether it is with respect to a recommendation of sentence or otherwise.

Mr. SCOTT. You indicated several new crimes on the Federal level. Most of the commentary now is going in the opposite direction, that is to say that there are too many crimes that have been federalized, the street crime situations ought to be dealt with on the State level. Is there any effort to defer jurisdiction to the States, instead of trying to increase your jurisdiction on crimes, try to divest jurisdiction to the juvenile system on the State level, which is obviously much better prepared to deal with juvenile crime?

Mr. DIGREGORY. Actually, I think this proposal recognizes, and my testimony recognized at the outset that the vast majority of cases are going to be handled in the State court system. And, one of the things that——

Mr. SCOTT. Why can't more of those cases be handled in State court, rather than Federal court? Is there—those that are on Federal lands, does the State have no jurisdiction on those?

Ms. MATTEUCCI. In general, Mr. Scott, the State does not have jurisdiction over crimes committed in Indian country. There are a few exceptions under special treaties where they do, but the vast majority of Federal juvenile crime does arise in Indian country and the State has no ability whatsoever to address it. The Tribal Courts have the ability in some instances to do so, but they are inadequately staffed, funded, and their criminal justice systems are not always as effective as we would like them to be.

Mr. SCOTT. What about State parks?

Ms. MATTEUCCI. State parks? Juvenile crime in State parks is prosecuted federally.

Mr. SCOTT. Can it be prosecuted locally?

Ms. MATTEUCCI. It can in certain circumstances be prosecuted locally.

Mr. SCOTT. And, what is the usual situation?

Ms. MATTEUCCI. You know, there is so few instances of experience that I can't tell you the answer to that.

Mr. SCOTT. I have one other comment.

Mr. MCCOLLUM. Go ahead.

Mr. SCOTT. What is your position with the Department of Justice and the Criminal Division?

Mr. DIGREGORY. I'm a Deputy Assistant Attorney General in the Criminal Division.

Mr. SCOTT. And, who is your supervisor?

Mr. DIGREGORY. My supervisor is James Robinson, who is the Assistant Attorney General for the Criminal Division.

Mr. SCOTT. Okay.

We are going to be submitted again to either the Criminal Division or the Civil Rights Division the case of Archie Elliott, which is a case of a police killing in Maryland a few years ago, to reconsider. It has been considered once by the Civil Rights Division, and his father was in my jurisdiction in Virginia when it started, and we want to pursue that case.

Mr. MCCOLLUM. Thank you, Mr. Scott.

Mr. Smith, do you have additional questions?

Mr. SMITH. I do, Mr. Chairman, but I'll be brief.

Mr. DiGregory, I think overall the recidivism rate is about 60 percent for all individuals for all crimes. Do you have any idea what it is for the four or five most serious crimes, the murder, rape and so forth?

Mr. DIGREGORY. I don't, but I'll try to get that information for you if I can.

Mr. SMITH. I assume that there is still a substantial recidivism rate, regardless of the crime, and it may actually be greater for the more serious crimes. I don't know, those are the more serious criminals, but my point is that if there is a high recidivism rate among those incarcerated as a whole, then that recidivism rate probably applies to juveniles as well.

As I say, if anything, maybe it's even greater, they are younger, they have more time to, perhaps, stay involved, although I hope they don't in a life of crime, but if there is a recidivism rate that is comparable to the overall recidivism rate, wouldn't it, therefore, reduce the number of crimes committed if the juveniles, as a result, are being treated as adults actually are confined for 50 percent more, which is a figure I heard Mr. Scott use a minute ago?

Mr. DIGREGORY. Well, I guess if your assumption is that——

Mr. SMITH. If the presumption there is that these juveniles are not committing crimes while they are in jail.

Mr. DIGREGORY [continuing]. If that's your assumption, then I suppose that's true, yes.

Mr. SMITH. Isn't that a fairly commonsensical assumption to assume that if someone is in jail there's less chance of him committing additional crimes?

Mr. DIGREGORY. Yes, I think that is a common sense assumption, and I can think back on my own experience where we were concerned in the particular jurisdiction in which I work with people who we identified as committing, perhaps, 70 percent of the crime in the district, and we felt that by dealing with numbers of those

folks we would substantially reduce criminal activity and reduce their recidivism rate if we could put them away for a long time.

Mr. SMITH. So, it is probable that in the case of few or relatively few juveniles who were prosecuted as adults, that you are reducing crime if, in fact, they are confined for longer than they would be otherwise.

Mr. DIGREGORY. Well, you can never know whether or not a particular individual, once they are released from prison——

Mr. SMITH. I'm just talking about overall.

Mr. DIGREGORY [continuing]. Is going to——

Mr. SMITH. Given the recidivism rate, isn't that a logical conclusion?

Mr. DIGREGORY. Again, I don't mean to disagree, I guess—I don't mean to disagree with you, but I think it all—it really depends, I mean, you can't ever predict whether or not a particular individual, once they are released, is going to do——

Mr. SMITH. No, no, again, let me make myself clear, I am not talking about any particular individual. I'm talking about just overall numbers, the sort of immutable law of recidivism combined with staying in jail for a longer period of time. If you keep individuals who are inclined, or who are likely to commit other crimes, in jail longer, isn't that going to reduce the crime rate?

Mr. DIGREGORY. It could, but the best indicator of whether or not it will, I guess a better indicator is what that person has done up until the time you've incarcerated them and put them in jail for a long time.

Mr. SMITH. Right, and, obviously, you can take that to an absurd conclusion, you could prevent the individual from ever committing another crime if you kept him in jail for life, and we are not talking about that, but within the bounds of reason, it seems to me fairly logical that if you keep an offender who has been convicted of a serious crime in jail for a little longer, and you have a substantial recidivism rate, you are going to reduce crime, but you are not willing to say that?

Mr. DIGREGORY. That offender is certainly specifically deterred, and all I am saying is, is that it is hard to predict, and it is better to predict, and even then it is difficult, if you know what somebody has done up until the time you have incarcerated them for this long period of time.

Mr. SMITH. So, therefore, if that is the case and you are unwilling to say that, so, therefore, if you are keeping that individual in jail longer, you are not doing it to protect society, apparently, because you are not willing to say that it is going to reduce crime.

Mr. DIGREGORY. No, I really did not say that at all. I am just saying that that individual has committed a very serious crime, and that individual—society needs to be protected, that individual needs to be punished, and certainly that particular individual will not be able, if he's put in jail for the rest of his life, or for a lengthy period of time, be able to perpetrate another serious crime on another victim.

Mr. SMITH. That was why I said it was absurd to say for the rest of his life, but for 50 percent more time you are not willing to say that that is going to reduce crime.

Mr. DIGREGORY. It could, that is about the best I can do.

Mr. SMITH. Okay, well that's fair enough.

One last point——

Mr. SCOTT. Will the gentleman yield very briefly. The 50 percent more time, are you saying that that is what they are going to get as an adult or as a juvenile?

Mr. SMITH. No, I was here talking about juveniles.

Mr. SCOTT. They are treated as a juvenile.

Mr. SMITH. I heard you make the point a while ago that they would likely be staying incarcerated for 50 percent more time, and I was making the point that——

Mr. SCOTT. As a juvenile.

Mr. SMITH [continuing]. Right, as a juvenile, that that might well reduce crime, and, apparently, it might, but we are not certain.

One last question is this, that I thought it was very significant and unusual a while ago that we had the ranking member of the Full Judiciary Committee say that "I don't like the position of the Department of Justice on juvenile crime. My question to you is, are you going to change your position as a result of that?

Mr. DIGREGORY. As I say, we are more than willing to talk to Mr. Conyers about those issues about which he is concerned.

Mr. SMITH. But, not willing to change them. Might you change them?

Mr. DIGREGORY. I will just stand on my answer, if I may be permitted to, Mr. Smith and Mr. Chairman.

Mr. SMITH. All right, thank you, Mr. DiGregory.

Mr. DIGREGORY. Thank you very much.

Mr. MCCOLLUM. Thank you, Mr. Smith, and I want to thank both of the witnesses for being here today. You have been very good, Mr. DiGregory and Ms. Matteucci. Thank you for coming. We appreciate it.

Ms. MATTEUCCI. Thank you, Mr. Chairman.

Mr. DIGREGORY. Thank you.

Mr. MCCOLLUM. We will now hear from our second panel, and I wish I could say it was more than one. We have one very distinguished individual. Our other person was Mr. Shepherd, but he got snowed in and he cannot be here.

[The prepared statement of Mr. Shepherd follows:]

PREPARED STATEMENT OF ROBERT E. SHEPHERD, JR., PROFESSOR OF LAW, UNIVERSITY OF RICHMOND, RICHMOND, VA

I am Robert E. Shepherd, Jr., and I am a professor at the T. C. Williams School of Law at the University of Richmond, where I have taught since 1978. Prior to that time, I taught at the University of Baltimore in Maryland, and previous to that, I was an Assistant Attorney General for the Commonwealth of Virginia, in which capacity I served as counsel to the then Division of Youth Services of the Department of Corrections. I have also served as Chair of the Juvenile Justice Committee for the American Bar Association and as Chair for Government Relations of the National Coalition for Juvenile Justice.

I appear before you today to urge you to support the reauthorization of the Juvenile Justice and Delinquency Prevention Act of 1974 without making any significant changes in the core requirements of the Act, and without adopting any unduly prescriptive provisions that would mandate particular procedural approaches to the administration of juvenile justice in the states. The core requirements—separation of juveniles from adult offenders in institutions, the removal of juveniles from adult jails, the deinstitutionalization of children who have committed no adult crime, and the reduction of the over-representation of children of color in juvenile facilities—are important in protecting the safety and reducing repeat offending by juvenile delinquents, and they articulate commonly held assumptions about the appropriate

handling of youth in institutions for their safety, but they do not interfere with the traditional state role in determining procedures in juvenile and family courts. As we have experienced significant drops in juvenile offending in the past four years, we should stay the course and concentrate on the further suppression of delinquent and criminal behavior by supporting effective prevention and community-based programs more aggressively with enhanced funding and more technical assistance.

Unfortunately, some of what has occurred at the state level and most of the proposals made by Congress in recent years has been focused on ineffective and unproven initiatives that would take us back to that day 100 years ago this year when juveniles were largely handled in criminal courts and housed in adult jails, and penitentiaries. The trend seems to be manifested through several major characteristics. First, a number of states have acted to ease the process of transferring children from the juvenile justice system to the criminal justice system for trial as adults. That trend has taken place in several ways in the various states: (1) easing the way for juveniles to be transferred through legislative waiver, automatically assigning particular juveniles to the adult court based on the offense charged or the prior record of the juvenile; (2) relaxing the processes by which juveniles may be transferred through the exercise of judicial discretion by changing the criteria for transfer or waiver; and (3) substituting prosecutorial discretion for judicial discretion through "direct file" or "bindover" systems whereby a prosecutor simply gives notice of his or her intention to try a particular juvenile as an adult rather than as a minor. I submit that these changes and proposals are misguided and uninformed at best, and cynical and counterproductive at worst. Every study that has taken place of juveniles in adult courts has established that juveniles who are tried and incarcerated as adults have a higher recidivism rate upon their release from the adult prison, commit new offenses earlier after release, and commit offenses more serious than those committed by juveniles who are retained in the juvenile justice system for the same criminal activity. In addition, the juveniles incarcerated as adults are between five and six times more likely to be physically or sexually assaulted in that adult institution with consequent anger and violence upon release. In addition, adult court judges may give many of these first-time offenders, at least for some offenses, a lighter sanction than they would have received in the more rehabilitative juvenile justice system.

The second national trend is to treat juveniles tried and sentenced as juveniles in juvenile and family court more severely, with longer periods of incarceration and with a lesser focus on rehabilitative treatment and more focus on incapacitation. There is somehow a belief that "more is better," but studies again show that such is not necessarily true. Studies done by the California Youth Authority demonstrate that over a ten-year period as the length of incarceration went up, the recidivism rate increased proportionately. In other words, there is a saturation point beyond which incarceration becomes counterproductive. In fact, some of the most effective programs in the country, including those operated by Associated Marine Institutes and their "Last Chance Ranch" in Florida combine a nominal period of incarceration, about eighteen months, with a much more effective corresponding period of intensive after care or post-release supervision. In addition, the incarceration period is significantly enriched with vocational and educational programs that are reinforced during the post-release supervision.

Third, there has been a growing emphasis on opening the juvenile justice process up to greater public access and media coverage by reducing the level of confidentiality historically afforded to both records and court proceedings themselves. Some of the ideas behind this are beneficial because their traditional confidentiality has been interpreted as secrecy and has left people with a lot of false impressions about what is occurring in the juvenile court. Opening the process up has the distinct advantage of making people somewhat more knowledgeable about what occurs in the system and aids public education. However, those who argue that increased publicity will serve a deterrent effect have a severely inadequate understanding of adolescent psychology. Obviously, some juveniles do not want their peers, neighbors, and teachers to know when they get into trouble, but those are the juvenile least likely to get into trouble in the first place. Other juveniles believe that their stature is enhanced by their involvement with the juvenile justice or criminal justice system because it establishes that they are truly "tough guys." I was amused a couple of years ago when I saw a news item from Great Britain that indicated that among the hottest clothing items for young males were shirts smuggled out of Her Majesty's Prisons that were selling for 75 pounds and were being worn by young men who had never served in such a place.

The bottom line for much of this is that policy is being made in almost conscious disregard of research data and verifiable facts. There is a great deal of posturing about "predators" and "young thugs" without any significant attention to "what

works and what doesn't." The focus has been on sound bites rather than sound policy.

What does and will impact significantly on juvenile crime is first an emphasis on primary prevention and early intervention. Programs such as the Healthy Start or Healthy Families models which in their manifestations around the country have significantly reduced the teenage birthrate and the incidence of abuse and neglect in participating families, and the prevention and early intervention programs, such as those developed in Boston, which will have a greater long-term impact on juvenile crime than political posturing and changes in the juvenile statutes. What we seem to be spending much of our energy and money on doing would be comparable to massive construction of tuberculosis sanitaria and increasing production of iron lungs, rather than seeking cures for tuberculosis and polio. Back-end loaded programs for dealing with health crises are notably ineffective from both a cost and human value standpoint, and yet our approach to youth violence, which is a significant public health crisis, has ignored these realities. Second, we need to put into place early intervention programs to identify those kids at high risk in the schools and the community and provide carefully targeted, minimally intrusive, programs. Third, we must give our judges a range of graduated sanctions to hold juveniles accountable when they appear in court, such as community service, restitution, victim mediation, and other programs that are fully implemented and monitored. Fourth, we must have strong program based in the community for those youths who penetrate farther—such as the MST program developed by Drs. Scott Henggeler and Gary Melton in South Carolina. Fifth, we need smaller juvenile correctional facilities that are program rich for specific groups of kids. We are beginning to learn that the large schools of the past are less effective than smaller schools and this is doubly true for correctional programs. Finally, we need to support a discretionary judicial waiver process to target those few hard-core juveniles who must be tried as adults. Why judicial waiver? Because every kid who is charged with a serious offense is not equally culpable, and transfer decisions need judicial review. One offender may be a triggerman in an armed robbery and the other a first offending lookout.

We also need to realize that a cookie-cutter, one size fits all approach dictated in Washington is not useful in bringing about meaningful juvenile justice reform in the states. Some creative, innovative reforms have been fashioned in New Mexico, Minnesota, and other jurisdictions that are being replicated in one manner or another in other jurisdictions. Minnesota's blended jurisdiction statute has been tried in Virginia for about three years with some promising signs. A prescriptive model imposed from the federal government will suppress much of this innovation and experimentation. Justice Brandeis pointed out in *New York Ice Co. V. Liebmann* (285 U.S. 262) in 1932, that:

> "It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory and try novel social and economic experiments without risk to the entire country." 285 U.S. at 311.

Justice Kennedy, relying in part on Brandeis, repeated that philosophy in *United States* v. *Lopez* (514 U.S. 549 (1995)), when he joined with the majority in striking down the Gun-Free School Zones Act of 1990, and said:

> "While it is doubtful that any state, or indeed any reasonable person, would argue that it is wise policy to allow students to carry guns on school premises, considerable disagreement exists about how best to accomplish that goal. In this circumstance, the theory and utility of our federalism are revealed, for the States may perform their role as laboratories for experimentation to devise various solutions where the best solution is far from clear." 514 U.S. at 581.

Allow states the opportunity to serve as laboratories and equip the Office of Juvenile Justice and Delinquency Prevention to disseminate the products of this experimentation through its research, publications and technical assistance. Don't force one single controversial and unproven model on jurisdictions as diverse as Massachusetts, Florida, Virginia, Oregon, Arizona, Louisiana, and the District of Columbia.

Mr. MCCOLLUM. Judge Frank Orlando is the Director of the Center for the Study of Youth Policy at Nova Southeastern University, Shepard Broad Law Center in Ft. Lauderdale. Prior to assuming his present position in 1988, he served as a Florida Circuit Judge for 21 years. While a judge, his primary assignments were in the Juvenile and Family Law Divisions. Judge Orlando developed and

supervised the Court Mediation Program and has written and lectured extensively in the areas of mediation, juvenile justice and restorative justice.

Judge Orlando currently provides technical assistance for the Annie E. Casey Foundation, a juvenile detention alternative initiative that helps States reform their juvenile justice agencies and programs. Judge Orlando received his BA and Juris doctor from the University of Florida, and it is always a pleasure to hear from a fellow Gator, so we are glad that you are here, Judge Orlando. I welcome you. Your entire testimony will be put into the record, and you may summarize or give us what you wish as you see fit, but without objection what has been submitted is admitted.

STATEMENT OF FRANK A. ORLANDO, JUDGE AND DIRECTOR OF CENTER FOR THE STUDY OF YOUTH POLICY, NOVA SOUTHEASTERN UNIVERSITY, FT. LAUDERDALE, FL

Mr. ORLANDO. Thank you very much, Mr. Chairman.

As an aside, other former Gators are anxiously awaiting your decision about your future in Florida. I believe Mr. Gallagher and Mr. Crist are waiting back in Florida, and we are, too, to see where you might be going, and I wish you well wherever it is.

Mr. MCCOLLUM. Well, thank you.

Mr. ORLANDO. I an sorry to see Senator Mack leave, I really am, but I guess he has other plans.

I would like to start by—you have put my credentials in the record, however, my main activity over the last 10 years with the Annie Casey Foundation was to work with States on the Key Decision-Maker project and the juvenile detention alternatives initiatives, in States that were seeking to reform their juvenile justice systems and learn from the experiments and research of other States. And, I am here today to talk mostly about the impact Federal juvenile legislation can have on States.

I would first like to address one or two things that I made note of during the testimony of the Justice Department, and first is concerning the lack of knowledge of research that impacts the positions that the Department of Justice is taking. I will offer the latest research by two other Florida Gators, Doctor Donna Bishop and Doctor Charles Frasier, called "The Consequences of Transfer." This is a telling research project. It is the fourth study that they have done on the impact of transfer of juveniles to the adult system in Florida, and they join in this report Professor Jeffrey Fagan and Frank Zimering, who are producing a book on this issue.

And, this (the report of the National Coalition on Juvenile Justice), I would ask every member of the committee to look at it, and I would ask that the Department of Justice, not only get it, but read it. I would also offer them the work of the Northwestern University School of Law, in a symposium that was published, "The Debate Over the Future of Juvenile Courts: Can we Reach Consensus?" The primary authors of this report were Barry Feld and Steven Morse, who argue for the abolishment of the juvenile court based somewhat on the concerns that Mr. Conyers has, and the response by Professors Grillo and Scott, who are talking about in this symposium, the cognitive decision-making process of juveniles, and the ability for a juvenile to be held in any way accountable for any

crime in the adult system, and the fact that treating juveniles as adults, based on the reserach they have done, and Bishop and Frasier have done, actually grows criminals and provides a negative effect on public safety.

Mr. SCOTT. Excuse me, it does what?

Mr. ORLANDO. [continuing]. It grows criminals in the adult system, because the research in Florida has shown that juveniles incarcerated as adults recidivate five times more rapidly than the same offender with the same background held in one of the State juvenile offender programs. The State of Florida has one of the best Juvenile Justice Departments in the country, and Florida adopted a graduated level based sanction process almost 10 years ago. We have a graduated sanction system in Florida.

One of the things we learned when the legislature expanded that system 2 years ago to include a level 10 sanction for more serious offenders, and created two separate institutions for level 10 offenders. Those institutions sit primarily and almost vacant today, and there is a move now to change them to other lower level sanctions because of the difficulty in finding the type of offender that committed the serious and violent or chronic offense that those institutions were created for.

The work of Bishop and Frasier also shows that when you place a juvenile—this is in response, I believe, to the Department of Justice, that is talking about the necessity to deal with 16 year old violent offenders in an adult institution. Most of the correctional administrators that I worked with in the last 10 years, especially in the States of New Mexico and California, were very, very opposed to bringing any kind of juvenile offender into their institutions because of their inability and incapacity to deal with these offenders and their feeling that they were more readily handled in organizations, or agencies, or institutions that were designed to deal with the cognitive thinking ability of juveniles.

In Florida, we have an array of programs, both private and public, that are dealing with offenders now that will match anything in the country. I believe California, New Mexico, and other places can say that, too.

One of the problems that we've had, and other States are learning from each other, is that—and this is where I would respond another instance with the Department of Justice, they are talking about changing the certification ability to the U.S. Attorneys to decide when a child is transferred to the adult court, when the recommendation is made. I would suggest that they rejust or rethink their position on who makes that decision look more closely at the available research.

The State of California, on two instances under a task force chaired by Mr. Trask, who is the District Attorney in Fresno, California, considered adopting the Florida process of transferring juveniles to the adult system. In both instances, they recommended to the Legislature that in one or two serious crime instances that the prosecutor be given that discretion. In both instances, the California Legislature defeated that legislation, based on the positions taken by a consensus collaboration of correctional people, judges, police officers, and district attorneys who felt that if public safety was to be protected that that decision should be made in a judicial

proceedings, on a recommendation of a prosecutor, a response by the defendant, input from the correcitonal agencies on the amenability of the child, and where in the system public safety would be most protected that a decision be made on a judicial basis.

California has what is called a 707 process, I believe it works very well. I think California should be left to decide this issue—not by a mandate from Congress.

In Florida, of the 4,200 or 4,500 juveniles committed and tried as adults last year, or sent to the adult system, only 700 were actually committed to prison, and as I said the Bishop and Frasier response shows that children coming out of the adult correctional system in Florida will recidivate within 6 months of release. To me, it shows that if we send 4,500 kids into the adult system, a 1,000 of them being misdemeanors, and only 700 or less than 700, and that number has declined since 1994, the highest it ever got was 1,300 in 1989, it has been declining ever since because the graduated juvenile sanction process that we have developed in Florida is holding more of those cases in the juvenile system, and more adult criminal court judges are transferring juveniles back for sentencing within the juvenile system.

We have in Florida the Eckert Programs, the Associated Marine Institute programs, the PACE programs, and many other State programs, that are geared to deal with juvenile offenders. I feel that the Federal Government placing a presumption on the States that they must transfer this decision to prosecutors will only allow States to make the same mistakes that we did and we are learning from now. I think Doctor Shepherd would have said today, he would have referred to this book, which every Congressman got from their State SAG group, "A Celebration of a Wake: The Court After 100 Years," where it quotes George Santana, a philosopher in the 1900's, who said, "Those who fail to learn from the mistakes of the past are committed to reliving them."

The juvenile court was created in 1899. Most of us think it was created only by social reformers and people concerned about the children being commingled with adults in adult facilities. There was also a growing number of prosecutors, and that is backed up by the reserach of Doctor Shepherd, who were concerned about jury nullification. More and more juveniles were escaping adult prosecution at the turn of the century because juries failed to convict them based on the fact that they knew and were concerned about the sentence options available in the adult system.

Many States are now learning that the mistakes of the past are being revisited on them and States like California, Minnesota, New Mexico, Montana, and other States have begun to see that the judicial process, is the best process that has been developed. States can learn from, was done in New Mexico. That was done under the leadership of present Congresswoman Heather Wilson, when she was the Secretary of Human Services in Colorado, a very progressive and accountability-based administrator. I think I would use her as a model for any State that wanted to find a person to run their agencies. She was very concerned about juvenile crime, but she was also concerned about letting more children escape because of the nullification process that went on.

In New Mexico, a prosecutor has the first right to decide who gets tried as an adult. He makes that charge, the child is charged, tried as an adult under adult rules. If the child is convicted, the court then goes into an amenability phase, the evidence is presented, the presumption in more serious crimes is for sentencing in the adult system, under less serious crimes the presumption is against it, and after the presentation of evidence the judge makes a decision based on where the public would be most protected and where the child would reach the status of a taxpayer rather than a tax liability as a continual criminal when he gets out of the system.

What I am trying to say to you today is, let the States continue progressive reform. The gentleman from the Justice Department was concentrating heavily on Indian crimes, 200 a year. States have learned how to deal with that. In Florida, when I was the Chief Judge of the Juvenile Court in Broward County, we had an agreement with the Indian reservation (Seminole), 99 percent of all crimes committed by Indians were tried and adjudicated on the reservation by the Tribal Court, they implemented the restorative justice balanced approach many, many years ago, that 23 States have now adopted as their public policy—but never implemented.

If they could not deal with the offender on the reservation, they came to our court, the prosecutor brought the case, and the Indian defendant had the access to State programs. I believe that we need to leave that concept to the States to decide if that is the way they want to handle it.

With reference to concerns about Federal parks, a murder was committed in a Federal park in Florida a number of months ago, where a juvenile (17 year old) murdered a staff member in an attempt to escape from a wilderness program in a Federal park. That juvenile was caught within 20 minutes by a State police officer, he was jailed in a juvenile jail in Ft. Meyers, and the adult prosecutor in Ft. Meyers was given the jurisdiction to prosecute that case, even though it took place on Federal park lands. That child was indicted by a grand jury and is subject now to first degree murder charges.

I believe that process needs to continue for serious crimes in U.S. parks. I would urge you not to take away from judges at any level the ability to make the decision on where the public would be best protected by the process, and I believe the States have that ability.

I would offer to you this chart from the Department of Juvenile Justice in Florida, that shows the research that has been done on how many kids have been put in adult prisons since 1975, the growth, and now the decline, the progress report of the Casey Foundation on where States and jurisdictions have made the most progress on dealing with the juvenile detention issue, and letting the States decide who gets held in detention, and how long it is for, and when they are tried, because, again, I am flabbergasted at the Department of Justice's lack of knowledge of the growing vast research that is available from their own agency, the Office of Juvenile Justice and Delinquency prevention, which will show that the positions they were taking here today are bogus and invalid.

And, I would say to you that I would be glad to answer any questions you have, I think that asking the States, in order to get ac-

countability block grant funds to accept Federal mandates on transferring juvenile cases is the wrong approach. I think that there is a good example. I have an article from the Miami Herald last week and it says, "Funds For Halfway House Stuck in Red Tape." Now, the Department of Juvenile Justice in Florida is taking a lot of heat by State legislators for this. This is a Federal problem, and the State is not responsible for the fact that this program in Miami did not get their $3.2 million, because under Federal regulations that conflicted with State regulations the Department of Juvenile Justice could not get the money to the program who is now complaining about that.

The reason that they cannot get it is because, if the State was left to its own regulations, and we were given the money under the Federal mandates that say, here, you can have this money to do creative things, the regulations of the State should control how that money is given to the local communities. And, I would suggest to you that when you commingle process and procedure, Federal and State, and take away from the States the right to continue their ability to dispense Federal monies, I believe these monies should be going through the State advisory groups because they are the ones who were authorized under the Federal law to deal with Federal juvenile justice funds.

We haven't had any trouble in dealing with dispensing juvenile justice monies, we are having trouble in dispensing Accountability Block funds and Truth-in-Sentencing funds. So, we generously accept the money, and appreciate it very much, but we feel that the State, especially now that we have an able former State Senator running our Department of Juvenile Justice, that we ought to be able to make the decisions and that the State of Florida should decide how and where kids or juveniles are prosecuted.

I would be glad to answer any questions.

Mr. MCCOLLUM. Thank you very much, Judge Orlando, for that eloquent disposition on the status of this matter.

[The prepared statement of Judge Orlando follows:]

PREPARED STATEMENT OF FRANK A. ORLANDO, JUDGE AND DIRECTOR OF CENTER FOR THE STUDY OF YOUTH POLICY, NOVA SOUTHEASTERN UNIVERSITY, FT. LAUDERDALE, FL

Members of the House Subcommittee on Crime:

It is indeed an honor and a privilege to appear before you today. My name is Frank Orlando. I am presently the Director of the Center for the Study of Youth Policy at Nova Southeastern University Shepard Broad Law Center, in Fort Lauderdale, Florida. For a lack of a better description, I travel the country helping States and localities implement effective juvenile justice policies. In my own State of Florida, I am an appointee to the State Advisory Group on Juvenile Justice, where I currently serve as acting Chairman. I bring with me 21 years of experience as a Circuit Court Judge—mostly in juvenile and criminal court, and the validation of my peers, through honors such as the American Bar Association's Livingston Hall Award in Juvenile Justice and the A.L. Carlisle Child Advocacy Award presented by the National Coalitition for Juvenile Justice Professionals.

I believe I can be the most help to you today by addressing all of the fresh ideas and sound policies being generated by States across our country. While I would be the first to admit that every State does not get all aspects of juvenile Justice correct, I firmly believe that we are much better off without a federal juvenile justice mandate that forces States to conform to a unitary National policy.

Nothing illustrates my point clearer than the issue of transferring juvenile cases to adult criminal court. Last session in the House, and this session in the Senate, legislation was offered that would, for all practical purposes, force every State to adopt the policy of prosecutorial waiver. While many State legislatures have already

adopted this approach, including Florida, other States, such as California, New Mexico, Minnesota, and Montana have rejected it and developed other effective approaches. In fact, the California Legislature twice considered prosecutorial waiver, and twice rejected it.

Credible research illustrates how profoundly negative the results of this Federal mandate would be. In Florida, about 4,500 juveniles were transferred by prosecutors to adult court last year, including 1,000 misdemeanor offenses. Of these, 3,100 juveniles were placed on probation and less than 700 juveniles received prison sentences. I strongly suggest to you that this is not protecting public safety or holding offenders accountable. I also suggest to you to look at the work of two Florida researchers, Dr. Donna Bishop and Dr. Charles Frazier, for a complete understanding of the consequences of transferring juveniles to adult court.

We are in the centennial year of the juvenile court, and some feel the court has out-lived its purpose. Unfortunately, those who are frustrated by the juvenile court fail to look at some of the reasons why we have a separate court system for delinquents. One of those reasons was jury nullification—when juries refuse to convict young criminals because of their age. Let me assure you that this phenomena is as alive today as it was in 1899. Another reason was that the juvenile courts are better equipped to deal with youth because they combine the delivery of services with accountability and consequences. Unlike adult probation where the offender is passively monitored, juvenile courts have the ability to commit youth, in some cases until they are 25 years old, to facilities that actively work to change the underlying behavior.

Let's be clear: we all want to enhance public safety, hold the offender accountable, and return him or her to society as an eventual taxpayer, not tax liability and continuing criminal. And while we have not achieved maximum effectiveness, and may never reach that ambition, many States are making a difference. States are experimenting, and in many cases, learning from their mistakes. Even more impressive, States are learning from one and other. An example I am particularly proud of is the Annie E. Casey Foundation's National Detention Alternatives Initiative. With the help of the Casey Foundation, Chicago, Portland, and Sacramento have reformed their pretrial detention systems at a significant savings to the public while improving public safety.

With the help of the Office of Juvenile Justice and Delinquency Prevention and private foundations like Casey, States are putting consequences into the juvenile justice system, and in many cases, making it more meaningful in the process. I urge you, do not over-reach and stymie very valuable efforts. The great philosopher, Yogi Berra once said "when you come to a fork in the road, take it!" The Juvenile Justice system is at that fork today, and there is a vision in many States of how to get around that fork. Please, let the Federal government help, not hurt these efforts.

The States welcome Federal assistance with research, analysis, program models, and funding. But I join other credible national organizations such as the National District Attorneys Association, the Police Executive Research Forum, the American Bar Association's Criminal Justice Section, the ABA's Task Force chaired by former Attorney General Edwin Meese, and others including Supreme Court Chief Justice William R. Renquist and Professor James Q. Wilson who are against the continued federalization of State's criminal laws and procedures.

I ask that my written remarks be included in the record along with six attachments, my remarks as the keynote speaker at the Kentucky Governor's National Best Practice Conference, the most recent research by Drs. Bishop and Frazier, entitled "The Consequences of Transfer", the Florida Department of Juvenile Justice's "Program Accountability Measures", "Profile of Delinquency Cases", and dated table "Juvenile Sentence to Adult Prison" (Source: Florida Dept. Of Juvenile Justice, Bureau of Research and Statistics, Ted Tolett, Director)., and the Annie E. Casey Foundation's Juvenile Detention Alternative Initiative Progress Report.

Thank you again, and I will be glad to answer your questions.

Mr. MCCOLLUM. I think we should take a recess, Mr. Scott, because we have a vote. In fact, we have two votes back to back, and we have somewhere in the neighborhood of 7 minutes left on this vote. As much as I would like to complete the questions, if you can come back with me, we should be back in about 20 minutes.

We will be in recess.

[Recess.]

Mr. MCCOLLUM. The Subcommittee on Crime will come to order.

Judge Orlando, I really appreciate your being here today, and you have a lot of respect in my State. I am very appreciative of your comments that you have made here today.

I am concerned that some of the issues that we are dealing with this morning is a lot narrower than your full breadth of knowledge. You know about a lot of things in the juvenile justice area. But the Federal questions that arise are very narrow. One of them is whether we should ever prosecute a 13 year old as an adult?

I gather from your comments that you might think that is too young an age. Do you think there are any circumstances when there should be a prosecution as an adult, are you generally opposed to it, or how do you feel about any prosecution of a juvenile as an adult?

Mr. ORLANDO. My answer to that question is, if the concern is public safety, and the concern is whether the person who commits the crime is going to come back from wherever he goes is accountability and competency development, I don't think I would be concerned at all about where he is prosecuted. My concern would be where he is held accountable and under what circumstances his sentence is imposed.

I feel that the question of age, once you get down around 13, if you read Professor Grillo and Scott, and the other child development people, they are very clear on the fact that you make no impact whatsoever on a 13 year old, or a 12 year old, or 11 year old. We do have the age of onset getting younger for kids who are committing violent crimes, because it is so easy to get a gun. You've got 11 year olds and 12 year olds. Putting those kids into the adult system, to me only grows them into criminals as they sit in adult sanctioned facilities.

Mr. MCCOLLUM. Well, let me get this straight so I understand your view. If somebody is a youngster at whatever age, and the decision for public safety is such that the judge—the court believes that he needs to be put away, or she needs to be put away, more or less permanently, then you would think treating them for sentencing purposes as an adult is an appropriate thing to do. But if the youngster could be rehabilitated at all, you would never do that, is what you are saying?

Mr. ORLANDO. I think I would refer you to the British system, the Bolger case, the two young kids who killed another boy in a mall in Britain, they were tried publicly, they were convicted, and now they are away in facilities where one is in a facility unknown with seven other kids and one is in a facility with four other kids. And, they will stay there, just as the only other murderer before them did, for some 17 years before she was released, they will stay there under sanction and under treatment until it is safe in the eyes of those who understand that better to be released.

I don't agree that a 13 year old should go into adult facilities, simply because the people who run those facilities tell me, and everybody else over and over again, they can't change their behavior, it only gets worse.

Mr. MCCOLLUM. So, it is the facility, not the sentence, we are concerned with.

Your point is, it would be preferable to take juveniles who have committed heinous crimes and put them away for long periods of

time, maybe under adult sentencing guidelines, but not in adult facilities. Is that correct?

Mr. ORLANDO. Well, I think at the young age of 13 there should to be a presumptive sentence. There should be a sentence that says the child remains in the State's custody until such time—you have got to have—California keeps it at 25, Florida is at 21 now, 23, I believe, on level 10 cases for kids there. You can't put a number on it. I think a 17 year old who committed the murder in the Everglades National Park could be subject to adult sanctions. He is old enough and under the grids that Professors Scott and Grillo lay out, they would tell you that a 17 year old can comprehend the sanction, but 11, 12 and 13 year old cannot.

Mr. MCCOLLUM. Let me ask you about some other statistics we have. The General Accounting Office gave us a report that says that State juvenile court judges nationwide transfer just under 3 percent of violent juvenile offenders to adult criminal court, and that has been true for a long time. I think it was 2.5 percent in 1985, 2.7 percent in the last measuring device we had.

Mr. SCOTT. 2.7 percent of what?

Mr. MCCOLLUM. Of all of the violent juvenile offenses, juveniles brought up to any juvenile court proceeding having committed a violent crime, only 2.7 percent are transferred into an adult court for trial.

So, the question is, does this percentage indicate that there is something wrong with the system. Is there a greater reluctance than there should be on the part of some juvenile judges to transfer a youngster to adult court? And, if that is true, is it because of the concerns you have expressed today, that they are going to get mingled in the adult facility. And, I am not talking about 13 year olds now, I am talking about 16 year olds, and 17 year olds and so forth. These statistics are remarkably low for covering all of those, which is the bulk of what we are dealing with.

Mr. ORLANDO. It all depends on what you describe as a violent offense. Many, many juveniles are charged, as I think Mr. Scott brought up, the $2.00 robbery, I think that is a Florida case he is talking about. That boy was charged with armed robbery, and the prosecutor made a quick decision to take a position, he had a zero tolerance on school violence, without determining whether or not that child—what was involved in that crime.

And, I think that there are very few juvenile court judges, when presented with a dangerous, chronic, violent offender, on a waiver proceeding, and California is the example I will use, and New Mexico also, that will not transfer that child in the name of public safety.

When you have a $2.00 robbery that is charged as armed robbery, and the victim comes forward and says, I wasn't in fear, I just felt sorry for the kid and I gave him the money, if that was in a process before a juvenile court judge you might think on the initial charge that kid should have—he was violent, he was dangerous, I think a judge makes a better decision based on the prosecutor's presentation and the department that is going to take care of that child saying whether or not they think he should be in one facility versus the next facility.

I really believe that judges, where you have that 2 percent figure, and the Indian case where the fellow here said that the judge denied waiver on the kid involved, the criminal, you have to look at the facts, and that is what the juvenile system does, it looks at case-by-case facts. Prosecutors look at offenses, if you are going to have a juvenile court you have to look at the individual, not the offense.

Mr. MCCOLLUM. But, Judge, and I don't want to exceed my time here, but it strikes me that you and I do not disagree on that point, we agree, I think that the judges should have discretion in large measure in this, and there are cases like you have given examples of where prosecutorial charging is kind of ridiculous when you get down underneath all of it.

But, at the same time, my concern is that unless you believe that prosecutors are charging an enormously large number of these cases of violent crime, or a relatively small number—unless you believe it is a huge number like that, the 2.7 percent seems extraordinarily low. If it were 10 percent, or 15 percent, or something like that, I would find it far more plausible.

Have you looked at the GAO report I referred to?

Mr. ORLANDO. What I looked at was a report put out by the Office of Juvenile Justice that took the 75 largest counties in the United States and said that only 1 percent of juveniles charged in those counties were waived to adult courts by judicial waiver.

I want to know in those counties what percent of those cases were sent into the adult system, and how many of them were nol pros'd and how many of them walked. I would say that if the judges are only waiving 1 percent in those 75 largest counties under the microscope they are under today, then that is 1 percent, those are the dangerous kids. If they are sending them to the adult system, and the ones they are not sending, I would say in most instances, belong in a juvenile system that better be able to keep them for long term in an intensive secure facility.

Mr. MCCOLLUM. I hear you, thank you very much.

Mr. Scott?

Mr. SCOTT. Thank you, Mr. Chairman, and, Judge, I share your concern about the presentation by the Justice Department, that it was, apparently, totally lacking in research-based analysis to justify any of their positions.

There is an underlying presumption that if you treat more juveniles as adults they will get a more severe sentence, and I think your numbers, that 4,500 juveniles are transferred by prosecutors, that would be that 1 percent in the most dangerous, and only 700 of them received prison sentences, which meant that 3,800, essentially, walked. If they are in adult court, there are no services, they just either got a suspended sentence or whatever, but just nothing.

So, if there is anything that will reinforce behavior, the fact that there is no sanction at all for the overwhelming portion that were treated as adults, I think that speaks volumes to what we are talking about.

The Justice Department suggested that one of the reasons they need to give the prosecutorial waiver is because in one jurisdiction a juvenile murdered a police officer, is it your experience as a

judge, and one that has traveled around the country, that juveniles who murder police officers are not routinely waived to adult court?

Mr. ORLANDO. That is not my experience. There are isolated cases, there are judges, for one reason or another, will say I want this case held in the juvenile system. But, I would say that if there is a murder of a police officer involved, and there is premeditation, and there is all the elements of a crime, in most instances that child, you know, if it is a 10-year old you might have another case, but if it is a 17 year old I would think most judges, including me, would probably certify that case.

Mr. SCOTT. And, when you say "most," do you mean you cannot imagine a judge that would not certify such a case if the criminal elements are there?

Mr. ORLANDO. Yes, but you also have to say, I have to see the facts in that case. You know, there are a number of cases where murder is involved, and we had a case in Florida where a kid was sentenced to life in prison for helping his father's gay lover murder him, and the Governor and Florida Parole Commission eventually pardoned that boy because they eventually looked into the facts, found out what kind of defense was involved, and he was sitting at 14–15 years old and serving life in prison. And, our Adult Parole Commission paroled that boy, and he is attending college now in Florida.

Mr. SCOTT. So, if you had seen a case where a murder of a police officer did not result in a waiver, you would assume that there are some underlying facts that would justify it.

Mr. ORLANDO. I would. I would. I wouldn't want to say the judge made a big mistake, I want to look at it first, as you should.

Mr. SCOTT. You had referred to some research, could you briefly describe some of the conclusions in that research that you have presented for the record?

Mr. ORLANDO. Well, the research, there is the latest study by Bishop and Frasier, which is a chapter in a book where they have interviewed a number of kids in adult prisons, and then looked at recidivism data. The underlying factor to be considered is that those children who come out of adult prisons are damaged to the extent that they are dangerous, and they present a risk to public safety that would not have occurred had they been held in the kind of facilities that would address their needs and change their behavior, if it at all could be changed.

And, that's been the result, Doctors Frasier and Bishop have done three studies for the Florida Department of Juvenile Justice and the Legislature on waiver and its effects.

Mr. SCOTT. Are you aware of any studies that show that treating more juveniles than we treat now as adults will reduce crime?

Mr. ORLANDO. No.

Mr. SCOTT. Have you seen—and this report would obviously conclude that if we—that, in fact, that would increase crime, if we treat more juveniles as adults?

Mr. ORLANDO. If you look at the recidivism data, it does increase crime.

Mr. SCOTT. How should the convenience of the prosecutor be weighed in determining what our process ought to be? The prosecutors indicated it would be, essentially, more convenient for them if

they could skip the process by which you have to convince the judge and just go straight to adult court, how should the convenience of the prosecutor be weighed in the evaluation of what we ought to do?

Mr. ORLANDO. In my view, it should give very low weight, because in a due process proceeding the convenience of the people involved should be the bottom of the totem pole to the top of the totem pole, should be public safety and due process.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. MCCOLLUM. Well, thank you.

And, Judge Orlando, I want to thank you for coming all the way up here.

Oh, Ms. Jackson Lee is here, I'm sorry, I didn't see you wander back in. You weren't here when I started all this. You are recognized for 5 minutes.

Ms. JACKSON LEE. Thank you very much.

Mr. MCCOLLUM. You are not one I overlook usually.

Ms. JACKSON LEE. I enjoy working with you.

Mr. Chairman, and to the ranking member, let me apologize. My absence was not for a lack of interest, I had three hearings scheduled at the exact same block of time, so I do apologize. This is an issue of monumental concern to me and my community.

I have had the pleasure of working with Judge Veronica Morgan Price, I am not sure if Judge Orlando—she has been a juvenile court trustee judge in Houston for a number of years.

Judge, I have a different line of questioning, and I appreciate very much the distinctiveness that you have made on the issue of violent juveniles, because those buzz words have been used, one, to frighten people, particularly elderly people, have been used to encourage, I think, far-reaching legislation that ultimately winds up recycling that juvenile, that is, to get everyone to believe that we are recklessly releasing those juveniles that would prey upon our communities.

And, you noted that the obviousness of a juvenile 17 years old that perpetrated a violent crime, possibly the killing of a police officer, there would be enough judges with common sense to be able to assess where that youngster should go.

I have been studying the question of mental health services for children, or access of mental health services for children, and the impact of the effect of mental illness or conditions on young people. We find that two thirds of the young people in America who need treatment do not have access to good mental health services.

My question to you as a judge, have you seen instances where youngsters are, in fact, tracked through the juvenile justice system, and as you begin to look at their family background and other circumstances, this child is really a case for counseling, long-term counseling, the counseling of the family.

I just noted the citation that you gave of the juvenile with the father and gay lover, caught up in a circumstance, I might imagine, I don't know the facts, where the child loved the father and was caught up in the need for love, and I am sort of being a back-seat psychology, but, in any event, and acted accordingly, instructed by the father. I don't know the facts.

But, I am very concerned that we sort of track our youngsters into the criminal justice system and what we have are broken lives and broken minds, and I am talking about as young as pre-five year olds, but then, of course, you see them, maybe you start seeing them as 10 year olds, 11 year olds, and pre-teens, which is a difficult time in and of itself.

The other question that I have, and maybe you just want to focus on the mental health first, is I am just noticing, when we talk about reforming the Federal juvenile justice system, and the recommendations under Title I under the US Department of Justice, just noticing this whole presumption in favor of adult prosecution for a juvenile 14 or older who is not handed over to the State authorities, who commits the Federal serious violent felony or a Federal serious drug offense, it just strikes me—strikes a cord of horror about that word presumption in favor of adult prosecution.

Would you comment first on the mental health issue, and then maybe this point about presumption as to your professional experience?

Mr. ORLANDO. Well, on the issue——

Ms. JACKSON LEE. And, thank you for making it up here.

Mr. ORLANDO. [continuing]. I don't have a lot of knowledge about mental health, I do know that Delbert Elliott, who is the Director of the Adolescent Violence Unit or Laboratory at the University of Colorado, who has done studies for the Rand Corporation and the Carnegie Foundation, where he studied chronic and violent offenders over—a number of them over a 15-year period, came up with the conclusion that adolescent violence can only be prevented if the children involved in these offenses late in life have their mental health and other environmental needs met at a very early age, and that the number one cause of juvenile violence that he found, and I think it answers some of Mr. Conyers' concern, especially among African American young men, is that they are early in life led to believe by their circumstances that they have no stake in a future, and that they will either be in prison or dead before they become adults.

Now, this is the results of his studies, not my conclusion, and that those young men who go into the life of violence do that because they feel they cannot have a family, they cannot have a car, they cannot have a job or a life, so they might as well steal it, and that if we address those needs early on through mental health systems, rather than waiting for the child to become a chronic and a violent predator, that we could prevent a whole lot of adolescent violence.

On the presumption issues, I really do not think there should be a presumption in favor of the prosecutor having the right to replace the judicial decision process.

Ms. JACKSON LEE. That was a quick 5 minutes, Mr. Chairman, but I do thank you, and I thank Judge Orlando for making it this direction, and for opening up the opportunity for us to discuss this important issue, and I thank Ranking Member Scott.

Mr. MCCOLLUM. Well, thank you very much Ms. Jackson Lee, and thank you, Judge Orlando. You have come a long way, as I started to say a minute ago, from my fair State, and I wish you bon voyage.

Mr. ORLANDO. To me it was a blizzard coming from Ft. Lauderdale.

Mr. MCCOLLUM. I bet it was. Were you here for that yesterday?

Mr. ORLANDO. I got in last night, instead of getting here at 3:00, I got here at 8.

Mr. MCCOLLUM. Wow, well, thank you again.

The hearing is adjourned.

[Whereupon, at 1:05 p.m., the subcommittee was adjourned.]

PUTTING CONSEQUENCES BACK INTO JUVENILE JUSTICE AT THE FEDERAL, STATE, AND LOCAL LEVELS

THURSDAY, MARCH 11, 1999

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m., in Room 2141, Rayburn House Office Building, Hon. Bill McCollum [chairman of the subcommittee] presiding.

OPENING STATEMENT OF CHAIRMAN McCOLLUM

Mr. MCCOLLUM. This hearing of the Subcommittee on Crime will come to order.

Today is the second day of our hearings focused on juvenile justice reform. Yesterday we looked at some of the Justice Department's proposal for improving and strengthening the Federal juvenile justice system. Today we consider how the Federal Government might support the promising approaches being pursued by States and localities to insure meaningful consequences for juvenile wrongdoing.

Our discussion and debate this morning is not an academic exercise. Violent juvenile crime is at nearly unprecedented levels, and there is a substantial likelihood that the juvenile crime rate will climb well into the next decade.

And at the same time that we face the prospect of increased juvenile crime, juvenile justice systems around the country are overburdened and, therefore, unable to insure appropriate sanctions for nonviolent offenses. Their limited resources are understandably focused on the more serious and violent offenders. They become like a hospital that can only serve the terminally ill.

Unfortunately, many juvenile justice systems unwittingly send the message to first time, nonviolent offenders that their wrongdoing does not matter. The irony, of course, is that this is precisely the type of offender that is most amenable to correction. In this way, juvenile justice systems themselves may be unintentionally contributing to the development of more hardened youthful offenders.

Even with violent juvenile offenders accountability is often lacking. A number of our witnesses this morning will review the statistics which tell the tale of insufficient consequences for juvenile of-

fenders who, after receiving a slap on the wrist, proceed to commit more violent crime.

As Congress considers how best to assist the States, there is broad consensus among Republicans and Democrats alike that effective prevention will be the cornerstone of any successful long-term solution regarding juvenile crime.

The central question then is what constitutes effective prevention. Abundant empirical evidence and common sense provide the answer: early accountability for youthful, nonviolent offenders is the most proven form of crime prevention. This will require putting consequences back into those juvenile justice systems that send the message to juvenile offenders, "Because you are a kid, we will look the other way."

Taking consequences seriously is not a call for locking all juveniles up, nor does it imply the housing of juveniles, even hardened violent juveniles, with adults. I, for one, am opposed to such commingling.

It does mean, however, that there must be meaningful and proportionate sanctions for delinquent and criminal acts, starting with the first offense. As the old saying goes, "A stitch in time can save nine." In the same way, early and appropriate sanctions can redirect the path of a youthful offender into a life of productive citizenship.

As a society, we strive to express consistently our moral condemnation of illegal and violent behavior. So must our juvenile justice system.

In recent years, many States and localities have sought to address the lack of meaningful consequences for nonviolent and violent offenders by implementing graduated sanctions. This approach seeks to insure meaningful and proportionate sanctions for juvenile wrongdoing beginning with the first offense and believes that consequences for wrongdoing are in the best interest of the public and youthful offenders.

I plan to introduce legislation in the near future that will assist States as they continue to embrace such accountability-based reforms. I am confident that such legislation will receive bipartisan support.

As our witnesses this morning well know, there is recent precedent for such a program. Over the last two fiscal years, $500 million has been available to States and local jurisdictions through the juvenile accountability incentive block grant program. These resources have been provided pursuant to H.R. 3, passed by the House in May 1997, and are focused on helping States and localities strengthen their juvenile justice systems so as to promote accountability for every act of juvenile wrongdoing.

The administration has proposed to zero out this program in next fiscal year. I think that would be a giant step in the wrong direction. To the contrary, I think we need to strengthen and enlarge the program, and I look forward to hearing the views of our witnesses this morning about the importance of it.

And honest debate about the Federal role in State juvenile justice reform requires acknowledging that Federal assistance to the States currently lacks balance. Indeed, Federal resources are heav-

ily weighted toward prevention programs, and that is in the traditional sense, not in the accountability sense.

There are currently 131 federally funded programs administered by 16 different Federal departments and agencies that focus on at risk or delinquent youth. They receive more than $4 billion annually.

Meanwhile the juvenile accountability incentive block grant is the only Federal program with the express purpose of helping States put consequences back in their juvenile justice systems. It is the only program that provides money to assist the States in hiring more juvenile judges and hiring more probation officers, in being able to do those things that are essential to making a juvenile justice system itself work.

The $250 million provided each of the last 2 years for this purpose is a pittance in comparison to the Federal support for the traditional prevention programs. I am not proposing abolishing these long existing prevention programs. The debate about their efficacy will, no doubt, continue. Some of them are stronger than others.

I am simply proposing to continue to assist States that want to pursue reforms characterized by moral common sense and with a proven track record, and I am for a program that will assist the States in having more juvenile judges, more probation officers, more counselors, and more ways to work within that system.

More States are moving in the direction that we are talking about. Yet as our witnesses will tell us this morning, these reforms are resource intensive. As with truth in sentencing, I believe the Federal Government can be a partner with the States by providing limited, but invaluable, funding to encourage them along the way.

[The prepared statement of Mr. McCollum follows:]

PREPARED STATEMENT OF HON. BILL MCCOLLUM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA, AND CHAIRMAN, SUBCOMMITTEE ON CRIME

This hearing of the Subcommittee on Crime will come to order.

Today is the second day of our hearings focused on juvenile justice reform. Yesterday we looked at some of the Justice Department's proposals for improving and strengthening the federal juvenile justice system. Today we consider how the federal government might support the promising approaches being pursued by States and localities to ensure meaningful consequences for juvenile wrongdoing.

Our discussion and debate this morning is not an academic exercise. Violent juvenile crime is at nearly unprecedented levels, and there is a substantial likelihood that the juvenile crime rate will climb well into the next decade. And at the same time that we face the prospect of increased juvenile crime, juvenile justice systems around the country are overburdened and, therefore, unable to ensure appropriate sanctions for nonviolent offenses. Their limited resources are, understandably, focused on the more serious and violent offenders. They become like a hospital that can only serve the terminally ill.

Unfortunately, many juvenile justice systems unwittingly send the message to first-time, nonviolent offenders that their wrongdoing doesn't matter. The irony, of course, is that this is precisely the type of offender that is most amendable to correction. In this way, juvenile justice systems themselves may be unintentionally contributing to the development of more hardened youthful offenders.

Even with violent juvenile offenders, accountability is often lacking. A number of our witnesses this morning will review the statistics which tell the tale of insufficient consequences for juveniles offenders, who, after receiving a slap on the wrist, proceed to commit more violent crime.

As Congress considers how best to assist the States, there is broad consensus among Republicans and Democrats alike that effective prevention will be the cornerstone of any successful long-term solution regarding juvenile crime.

The central question, then, is what constitutes "effective prevention"? Abundant empirical evidence and common sense provide the answer: Early accountability for

youthful, nonviolent offenders is the most proven form of crime prevention. This will require putting consequences back into those juvenile justice systems that send the message to juvenile offenders: Because you're a kid we'll look the other way.

Taking consequences seriously isn't a call for locking all juveniles up; nor does it imply the housing of juveniles—even hardened, violent juveniles—with adults. I, for one, am opposed to such co-mingling. It does mean, however, that there must be meaningful and proportionate sanctions for delinquent and criminal acts, starting with the first offense. As the old saying goes: A stitch in time can save nine. In the same way, early and appropriate sanctions can redirect the path of a youthful offender into a life of productive citizenship.

As a society, we strive to express consistently our moral condemnation of illegal and violent behavior. So must our juvenile justice system.

In recent years, many states and localities have sought to address the lack of meaningful consequences for nonviolent and violent offenders by implementing "graduated sanctions." This approach seeks to ensure meaningful and proportionate sanctions for juvenile wrongdoing, beginning with the first offense, and believes that consequences for wrongdoing are in the best interest of the public AND youthful offenders.

I plan to introduce legislation in the near future that will assist States as they continue to embrace such accountability-based reforms. I am confident that such legislation will receive bi-partisan support.

As our witnesses this morning well know, there is recent precedent for such a program: Over the last two fiscal years, $500 million has been available to States and local jurisdictions through the Juvenile Accountability Incentive Block Grant program. These resources have been provided pursuant to H.R. 3, passed by the House in May, 1997, and are focused on helping States and localities strengthen their juvenile justice systems so as to promote accountability for every act of juvenile wrongdoing.

The Administration has proposed to zero out this program next fiscal year. I think that would be a giant step in the wrong direction. To the contrary, I think we need to strengthen and enlarge the program, and I look forward to hearing the views of our witnesses this morning about the importance of this program.

An honest debate about the federal role in state juvenile justice reform requires acknowledging that federal assistance to the States currently lacks balance: Indeed, federal resources are heavily weighted toward prevention programs. There are currently 131 federally funded programs administered by 16 different federal departments and agencies that focus on at-risk or delinquent youth. They receive more than $4 billion annually. Meanwhile, the Juvenile Accountability Incentive Block Grant is the only federal program with the express purpose of helping States put consequences back into their juvenile justice systems. The $250 million provided each of the last two years for this purpose is a pittance in comparison to the federal support for prevention programs.

I am not proposing to abolish these long existing prevention programs. The debate about their efficacy will, no doubt, continue. I am simply proposing to continue to assist States that want to pursue reforms characterized by moral common sense and with a proven track record.

More States are moving in this direction. Yet, as our witnesses will tell us this morning, these reforms are resource-intensive. As with truth-in-sentencing, I believe the federal government can be a partner with the States by providing limited, but invaluable, funding to encourage them along the way.

I believe Mr. Scott has an opening statement.

Mr. MCCOLLUM. I believe Mr. Scott has an opening statement, and I will recognize you for that purposes, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman, and I want to again thank you for holding the 2 days of hearings on juvenile justice policy considerations.

Yesterday we heard from the Department of Justice as to what the department considers to be effective juvenile justice policy, given prosecutors' authority to waive juveniles into adult court without prior court approval, increasing the categories of offenses for which juveniles can be waived into adult court, housing juveniles with adults, putting juvenile arrest records on the FBI data files, which may now be provided to private organizations and citi-

zens, as well as law enforcement officials, and other changes in the protections historically afforded to juveniles.

When asked for the research suggesting that any of these changes would reduce crime, the answer was that they knew of none. When asked if they were aware of the research which showed that prosecuting more juveniles as adults and housing juveniles with adults could actually increase crime and violence and result in them serving less time, the answer was that they were not aware of that research.

The convenience to prosecutors from adopting these provisions was apparently justification enough for the Department of Justice to propose them.

Judge Frank Orlando, who spoke in response to the department's proposed reforms to the Federal system, spoke at length about the research and experiences of juvenile justice officials which have documented the findings that treating more juveniles as adults and housing them with adults will increase crime and violence.

Given the department's approach to addressing juvenile crime, it is both a tragedy and a blessing that all of this attention is being given to the Federal system, which affects only about 200 juveniles per year as compared to tens of thousands of juveniles affected in State and local jurisdictions.

Perhaps the greatest tragedy of the department's proposals is that the department is looked upon by the States and localities to establish model juvenile justice programs. Yet the department is proposing changes in the Federal juvenile system which not only disregard research and programs shown to prevent crime, but which will actually increase crime and violence.

Research shows that crime prevention programs offering a continuum of services aimed at children at risk, starting with teen pregnancy prevention, the opportunity for interventions as needed at prenatal, early childhood, school age, adolescent, and teen years will reduce crime and save money.

Teen pregnancy prevention, WIC, Head Start, after school programs, recreation programs, college scholarships, Jobs Corps and other youth training programs, summer job programs, drug treatment programs have all been shown to reduce crime and save more money than they cost in saved law enforcement, prison, welfare, remedial education, and training costs.

So we know what works, and when compared to the billions of dollars we are spending or are willing to spend on law enforcement and incarceration after crimes have been committed, we certainly have the money to do what actually works.

However, when it comes to crime the programs which actually reduce crime have to compete with the best politics of crime. The best politics of crime call for the tough sounding law enforcement policies based on tough sounding sound bytes, such as, "You do the adult crime, you do the adult time."

Politicians have shown that they are willing to spend billions of dollars to implement such vote getting, sound byte based policies while totally ignoring or spending only a pittance on proven crime prevention programs.

I hope that these hearings and the information that they will produce will serve as a basis for a turnaround in the practice of

spending billions to address crime after it occurs, while spending very little to prevent it from occurring in the first place.

Today we have a panel of witnesses with a broad array of experiences and insights regarding what they believe is needed to actually reduce juvenile crime and violence at the State and local level, where the vast majority of crime occurs. The witnesses have been asked to comment on the appropriateness of establishing a system of graduated sanctions to address juvenile crime.

Research shows that close to two-thirds of the juveniles brought before the juvenile court do not return with another problem beyond the initial program, and that suggests that there is already a high degree of success in what the juvenile courts are doing.

If graduated sanctions refers to a program designed to provide courts with resources they need to address at any time the problems presented by juveniles when they come before them, this could very well mean that the success rate could go up.

However, I am concerned that we not establish a program that would impose sanctions which may be inappropriate to the individualized needs of specific juveniles because inappropriate sanctions might be counterproductive to the current success rate.

But I think that the evidence will demonstrate that initiatives providing the juvenile system with sufficient resources to allow early interventions with children on a trajectory toward future violence will be effective.

So I will look forward to the testimony of the witnesses as to how we can best assist States and localities in preventing juvenile crime before it occurs as opposed to waiting for crimes to occur and then pounding on offenders as we catch them.

I am particularly pleased to welcome my constituent, Judge Richard Taylor, of the Richmond, Virginia, Juvenile and Domestic Relations Court, and Judge Patricia West, who is on the bench from Virginia Beach, which is my neighboring jurisdiction. She is on the Juvenile and Domestic Relations Court also.

So thank you, Mr. Chairman, and I look forward to the testimony of the witnesses.

[The prepared statement of Mr. Scott follows:]

PREPARED STATEMENT OF HON. ROBERT C. SCOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Thank you, Mr. Chairman. I again want to commend you on holding these 2 days of hearings on juvenile justice policy considerations. Yesterday we heard from Department of Justice (DOJ),officials as to what they consider to be effective juvenile justice policy—giving prosecutors authority to waive juveniles into adult court without prior court approval, increasing the categories of offenses for which juveniles can be waived into adult court to include drug offenses and computer hacking, housing juveniles with adults, putting juvenile arrest records on the FBI's data files which may now be provided to private organizations and citizens as well as law enforcement officials, and other changes in the protections historically afforded juveniles.

When asked for the research suggesting that any of these changes would reduce crime, the answer was that they knew of none. When asked if they were aware of all the research which showed that prosecuting more juveniles as adults and housing juveniles with adults would actually increase crime and violence and result in them serving less time, the answer was no. The convenience to prosecutors from adopting these provisions was, apparently, justification enough for DOJ to propose them. Judge Frank Orlando, who spoke in response to DOJ's proposed reforms to the federal system, spoke at length about the research and the experiences of juvenile justice officials which have documented the findings that treating many juveniles as adults and housing them with adults increases crime and violence. Given

DOJ's approach to addressing juvenile crime, it is both a tragedy and a blessing that all of this attention is being given to the federal system that affects only about 200 juveniles per year as compared to the tens of thousands of juveniles affected in state and local jurisdictions.

Perhaps the greatest tragedy of DOJ's proposals is that DOJ is looked to by the states and localities to establish model juvenile justice programs. Yet, DOJ is proposing changes in the federal juvenile court system which not only disregard research and programs shown to prevent juvenile crime and violence, but which actually *increase* crime and violence.

The research shows that crime prevention programs offering a continuum of services aimed at children in at-risk conditions, starting with teen pregnancy prevention, with the opportunity for interventions as needed at prenatal, early childhood, school age, adolescent and teen years, will reduce crime and save money. Teen pregnancy prevention, WIC, Head Start, after school programs, recreation programs, college scholarship programs, Job Corps and other youth job training programs, the Summer Jobs program, and drug treatment programs have all been shown to reduce youth crime and to save more money than they cost in saved law enforcement, prison, welfare and remedial education and training costs. So we know what works and, when compared to the billions of dollars we are spending, or willing to spend, on law enforcement and incarceration *after* crimes have been committed, we certainly have the money to actually do what works.

However, when it comes to crime, the programs which actually reduce crime have to compete with the best politics of crime. The best politics of crime call for tough-sounding law enforcement policies based on tough-sounding soundbites such as "ya' do the adult crime, ya' do the adult time". Politicians have shown that they are willing to spend billions of dollars to implement such vote-getting soundbite-based policies while totally ignoring, or spending only a pittance, on proven crime prevention programs.

I hope that these hearings, and the information they produce, will serve as the basis for a turnaround in the practice of spending billions to address crime *after* it occurs while spending little to prevent it from occurring in the first place.

Today, we have a panel of witnesses with a broad array of experiences and insights regarding what they believe is needed to actually reduce juvenile crime and violence at the state and local level, where the vast majority of it occurs. The witnesses have been asked to comment on the appropriateness of establishing a system of graduated sanctions to address juvenile crime. Research indicates that close to ⅔ of the juveniles brought before the juvenile court don't return with another problem beyond the initial problem. This suggests that there is already a rather high degree of success in what the juvenile courts are doing. If '.'.graduated sanctions" refers to a program designed to provide courts with the resources they need to address, at any time, the problems presented by the juveniles who come before them, this could very well mean that this success rate will go up. However, I am concerned that we not establish a program which would impose sanctions which may be inappropriate to the individualized needs of the specific juvenile, because inappropriate sanctions might be counterproductive to the Current success rate. But I think that evidence will demonstrate that initiatives providing the juvenile system with sufficient resources to allow early interventions with children on a trajectory towards future violence will be effective.

So I look forward to the testimony of the witnesses as to how we can best assist states and localities in preventing juvenile crime before it occurs as opposed to waiting for crimes to occur and then pounding on the offenders we catch. I am particularly pleased to welcome my Constituent Judge Richard Taylor of the Richmond, Virginia Juvenile and Domestic Relations District Court and Judge Patricia West who is on the bench for the Virginia Beach Juvenile and Domestic Relations District Court, my neighboring jurisdiction. Thank you, Mr. Chairman.

Mr. MCCOLLUM. Thank you very much, Mr. Scott.

Mr. Rothman, do you have any opening comments you wish to make?

Mr. ROTHMAN. No, other than that I am glad to be here and look forward to an interesting session.

Mr. MCCOLLUM. Well, thank you very much.

With that, Mr. Kennedy has apparently stepped out, and I would recognize him if he comes back, but we are going to introduce the panel today, and I would like to ask that, as I introduce you, please come forward and be seated.

We have a very distinguished panel. Our first witness is Judge David Grossmann. Judge Grossmann retired last year as the presiding Administrative Judge of Hamilton County Juvenile Court in Cincinnati, Ohio, where he had been a judge since 1976.

He is the past President of the Council of Juvenile and Family Court Judges, an organization of more than 2,000 juvenile and family court judges across the country. Judge Grossmann has served on and served many national committees and helped draft policy on national issues of juvenile justice. He is the past President of the Ohio Association of Juvenile and Family Court Judges, and he has been a regular source of wise counsel to this subcommittee through the years. We greatly appreciate his coming back today to once again contribute to what we are doing.

Our next witness is Judge Patricia West. Judge West was appointed in January 1998 by the Virginia General Assembly to the Juvenile and Domestic Relations District Court in Virginia Beach.

Previously Judge West served on Governor George Allen's cabinet as Secretary of Public Safety for Virginia. In that capacity she oversaw 11 State agencies, including the Department of corrections, the Virginia State Police, the Department of Juvenile Justice, and the Department of Emergency Services.

Prior to being named Secretary of Public Safety, Judge West served as the Director of the Department of Juvenile Justice, where she helped spearhead major reforms to Virginia's juvenile justice system.

So we welcome you, Judge West.

Our next witness is my friend from Florida, Ken Sukhia. Mr. Sukhia is a partner with the law firm of Fowler, White, Gillen, Boggs, Villareal and Banker in Tallahassee, Florida.

In August 1990, President Bush appointed Mr. Sukhia to serve as the United States Attorney for the Northern District of Florida, where he served until June 1993. In this capacity, Mr. Sukhia developed a highly successful affirmative civil action litigation program and organized a statewide health care fraud task force.

During Mr. Sukhia's tenure as U.S. Attorney in the Northern District of Florida, there were also imposed some of the toughest sentences in the Nation, with average sentences nearly double the national average.

Our next witness is Jim Kester. Mr. Kester is the Juvenile Justice Specialist for the Office of the Governor of the State of Texas. He is responsible for drafting annual plans to implement State and Federal funding programs, including the State's criminal justice planning fund, the Federal juvenile accountability incentive block grant, and the Juvenile Justice and Delinquency Prevention Act.

Mr. Kester has 35 years of experience in planning and implementing juvenile justice and criminal justice programs, from early prevention programs for at risk youth and younger offenders to incarceration of violent and chronic offenders

He is joined by a fellow Texan, Wesley Shackelford. Mr. Shackelford is the senior staff attorney for the Texas Juvenile Probation Commission located in Austin, Texas. In that capacity, he works extensively with the State legislature and other agencies on juvenile justice issues.

On behalf of the Probation Commission, he is also a principal liaison with juvenile court judges, probation officers and prosecutors. He has been extensively involved in the Texas juvenile justice reform effort, with Texas having recently implemented a system of graduated sanctions.

Our next witness is Judge Richard Taylor. Judge Taylor serves as a judge on the Juvenile and Domestic Relations District Court in the City of Richmond, Virginia, having been appointed to the position in 1993 by the Virginia General Assembly.

Judge Taylor formerly served as deputy counsel and special assistant for policy to Governor Douglas Wilder. Prior to his work at the Governor's office, he was an associate in the law firm of Hill, Tucker & Marsh.

Our next witness is Representative Mike Lawlor. Mr. Lawlor is serving his seventh term as a member of the Connecticut House of Representatives, where he represents the 99th District.

He serves as chairman of the Judiciary Committee in the legislature. Mr. Lawlor has been recognized for his work reforming Connecticut's criminal justice system, including alternative forms of punishment, drug policy, juvenile justice reform, victims' rights, and sexual offender registration.

He also serves as general counsel for Giordano Associates, a consumer advocate, public adjustment firm in East Haven, Connecticut. He is also the practitioner in residence teaching criminal law at the University of New Haven.

Mr. Lawlor is here today on behalf of the National Conference of State Legislatures.

And our final witness this morning is Dr. Laurence Steinberg. Dr. Steinberg has been the Laura Carnell Professor of Psychology at Temple University since 1988. He is also the Director of the John D. and Catherine T. MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, and Director of Graduate Studies in the Department of Psychology at Temple University.

Dr. Steinberg is a licensed psychologist in the State of Pennsylvania, recipient of numerous academic honors and awards, author of 15 books and numerous articles on adolescence, and the ongoing lecturer and keynote speaker at various organizations.

We have a very distinguished panel today, and I want to thank all of you for coming, many of you from long distances, and we greatly appreciate it. The subject matter surely is worthy of it.

As I said earlier, we will probably get interrupted at some point with votes this morning, but what we are going to do is proceed in the order in which I introduced you with Judge Grossmann first.

I would like to ask you to please summarize your testimony in roughly 5 minutes or so. I know that is short for the distance you have come, but we want to be able to ask questions and, without objection, I will enter all of the written testimony of each of you into the record at this time in its entirety.

I hear no objection, and it is so ordered and entered.

So with that in mind, Judge Grossmann, if you could go first, we would be glad to recognize you, and you may proceed.

Thank you.

STATEMENT OF DAVID GROSSMANN, RETIRED JUDGE, HAMILTON COUNTY JUVENILE COURT, CINCINNATI, OH

Mr. GROSSMANN. Thank you, Mr. Chairman.

With me are two gentlemen, Mr. Thomas Madden and Mr. Frank Horton, former Congressman Horton, who have ably assisted us in the National Council in our work.

Mr. MCCOLLUM. Well, I want to take the opportunity to interrupt you, and I will not do that to any other witnesses, to acknowledge my former colleague, Frank Horton. He is a good friend of the committee and a good friend of both Congressman Scott and myself and Mr. Rothman. I do not know if you have gotten acquainted yet, but he is a very distinguished former member.

Thank you for bringing him.

Judge Grossmann.

Mr. GROSSMANN. It is appropriate, Mr. Chairman, that we be discussing the potential improvement of the juvenile justice system here in the anniversary year of the founding of the juvenile courts in 1899, and this year we will celebrate that founding in Chicago, and I hope many of you will be able to attend that conference.

The juvenile justice system was initiated in form basically to protect society, and by the protection of society, it sought to protect children and to supervise those that came before its jurisdiction and under its authority.

It seeks to do that in several ways. First of all, it seeks to restrain and repress personal destructive behavior and behavior that is threatening and damaging to the affairs of others and their property, to the personal lives of others and their safety.

It accomplishes this in several ways. First of all, it seeks in its process of restraint to control the tendency toward destructive behavior on the party of many children and youth, and also to encourage them and to guide them toward more positive behavior, particularly in the area of personal responsibility, in the area of concern for the rights and property and the safety of others, and to seek to give them guidance as they move through life toward a more constructive lifestyle.

In this process, the court has to exercise a broad range of responses. The fortunate courts across this country who have been well resourced have a substantial range of responses, and I have outlined them in my written testimony. I will not detail them for you this morning, but those responses, in order to be effective, must also be appropriately resources.

Without those resources, the courts frequently across the country are left with the unhappy prospect of simply a repeated droning on of admonishments and unacceptable tolerations in the face of what sometimes are escalating behaviors that threaten the safety and well-being of themselves and others.

Unfortunately that is the case in many instances, and it is for that reason that I think we here in the Congress, you in the Congress and we in the States, must spend every effort to attempt to avoid that outcome.

In doing so, we will avoid the obvious result on the part of young people who are not stupid and who realize that if we do not take those opportunities to restrain unacceptable behavior, they see us either as unwilling or unable to do so, and as adults, when we send

that message, we encourage young people to believe that we are, in fact, concentrating on our own interests and not really concerned for the well-being of either themselves or others.

The outcome of that is obvious. There is an old saying that says if you want to see how a society functions and what it considers uppermost in its priorities, watch how it spends its money and where it spends its time, and when you do not find the resources being given to courts who are standing in the breach, as it were, to face the many problems that young people suffer from today, I think we are subject to that criticism.

I applaud the efforts of this committee to seek to further strengthen the courts, and I might mention a couple of particular points in that regard.

As I said, I have already mentioned a long list of resources and a long list of responses that I think are very important for any court to have, but also the courts must have the ability to collect data and measure its own statistical information both for the purpose of evaluating those cases that come before it, those young people and their families that come before it, keeping appropriate records accessible to the hearing officers and to the judges, but it also must contain data that allows the court to monitor its own processes.

If the court cannot manage its own affairs in an efficient and an effective fashion, how can we expect others to do so? And many courts lack that kind of information, that kind of resource.

The other thing that I would suggest, the courts must have the ability for training of their staffs, their personnel, the judges and magistrates, and to investigate those projects that are deemed worthy and have an already proven track record of working in responding to the out of control behaviors of some juveniles.

If we do not have those kinds of guiding activities, the court does not function well, and I would particularly ask the committee as it considers how it is going to craft its latest efforts to assist the juvenile justice process to consider those issues; that the courts be able to monitor its own statistical and data systems and have the sufficient software and hardware to do so effectively, and to evaluate its programs and processes for their effectiveness, and finally, to train its staff and personnel in appropriate fashions to respond.

If we do not do this and the courts languish, and of course, the courts are the last resort on the part of society to confront the behaviors of young people who have led lives that have indicated they are out of control, not self-respecting, not respecting of others; if we do not do this, obviously society will suffer, and obviously the safety of the community will suffer.

So I am delighted that the committee is seeking to once again extend a helping hand to the local service systems and particularly the local courts.

[The prepared statement of Judge Grossmann follows:]

PREPARED STATEMENT OF DAVID GROSSMANN, RETIRED JUDGE, HAMILTON COUNTY JUVENILE COURT, CINCINNATI, OH

Chairman McCollum, members of the Subcommittee, the National Council (NCJFCJ) is honored to have the opportunity to testify before you today on the courts' experience and views on graduated accountability based sanctions for juvenile offenders, and on related matters.

I am David E. Grossmann of the Hamilton County Juvenile Court, Cincinnati, Ohio, and a recent President of the NCJFCJ. With me this morning is retired Congressman Frank Horton, now of the Venable law firm here in Washington which has provided legal and legislative assistance to our organization for many years.

Founded in 1937, NCJFCJ is an independent nonprofit membership organization comprised of state judges and other professionals of courts which deal with children and families. The case loads of these courts have grown dramatically especially in the areas of family and domestic violence, abuse and neglect of children, violent juvenile crime, alcohol and drug abuse, divorce, adoption and non-support of children.

NCJFCJ maintains the National College of Juvenile and Family Law headquartered at the University of Nevada, Reno which last year alone sponsored or collaborated in implementation of over 165 national, regional, state or local training programs for over 17,000 judges and professionals. The cost of the college is kept low because NCJFCJ members volunteer their time to serve as faculty and also to provide follow-up technical assistance to trainees and their courts, especially with regard to court management issues, such as more effective utilization of automated information systems.

In 1975 NCJFCJ's research arm, the National Center for Juvenile Justice (NCJJ) was established in Pittsburgh. With federal support from the Office of Juvenile Justice and Delinquency Prevention it collects from the courts and analyzes data and trend information on juvenile crime issues. Reports and bulletins are issued by OJJDP and, thus, provide the primary source of credible nationwide information on juvenile delinquency to the media worldwide, to Congressional Committees, members of Congress and their staff and others.

NCJFCJ members and their court manager partners, members of the National Juvenile Court Services Association, are as active locally, in their state capitols, and nationally in Congress as professional rules of conduct allow. For example, the American Bar Association Code of Judicial Ethics states that judges have a *duty* to advocate for more fair and efficient administration of justice, and NCJFCJ policy provides that judges should provide leadership in their communities, states and nationally, especially on behalf of deprived children. Thus, judges welcome opportunities to testify before Congressional Committees and meet with their Representatives and Senators on children's and family issues, just as they welcome such opportunities with their state legislatures and boards of county commissioners.

The NCJFCJ is a national resource with judges and professional staff that has several features that can assist in developing and conducting Congressional hearings and in preparing legislation to improve the effectiveness of the justice system. Key features include the Family Violence Project with its Resource Center on Domestic Violence and Model State Code on Domestic and Family Violence Implementation Project; study efforts on the serious juvenile offender; the Permanency Planning Project for ensuring permanent families for children with emphasis on expedited adoptions; the 15 big city juvenile and family child abuse and neglect case management project; the substance intervention and control project; the systems, applied and legal research efforts of the National Center for Juvenile Justice and its National Juvenile court Data Archive.

Throughout its history NCJFCJ and many of its member judges have been involved with development of federal as well as state legislation concerned with families and children. We have been especially active since the enactment of the original Office of Juvenile Justice and Delinquency Prevention Legislation 25 years ago, and in connection with its periodic reauthorization and yearly appropriations.

Recently, several key judges worked closely with several minority and majority Senators and their staffs in the final development of P.L. 105–89, *The Adoption and Safe Families Act of 1997*. We believe it is one of the proudest accomplishments of the last Congress, providing as it does for more fair, effective and expeditious court processing of children who are the victims of abuse and neglect. As a result more of them will be able to be adopted and sooner than has been possible in the past.

SUPPORT FOR JAIBG

NCJFCJ is concerned that comprehensive juvenile justice reform legislation, including reauthorization of OJJDP failed, yet again in the 105th Congress. Juvenile and family courts have benefited significantly from OJJDP's programs and funding. Most recently with the 1998 advent of Juvenile Accountability Incentive Block Grant, funds are being provided especially to meet some of the courts' most pressing needs. More than anyone else, Mr. Chairman, the judges know they have you and your Committee colleagues to thank for this block grant and we hope it will be continued and expanded.

NCJFCJ believes that the Juvenile Justice Accountability Block Grants Program should be incorporated into the legislation to reauthorize OJJDP which we hope will finally be passed this year. The requirement of a graduated accountability-based sanctions system for juvenile offenders is sound. It conforms with long standing NCJFCJ policy, is necessary to the courts' role of protecting the public, and is the basis for the courts' goal of rehabilitating juvenile offenders.

CINCINNATI RESOURCES

You have asked me to address the question of resources necessary for such a system. In Cincinnati (Hamilton County), Ohio under the authority and leadership of the court we have over the last 15 years established:

- an advanced management information system that provides detailed data on all court cases and processes accessible by law enforcement and in the aggregate used by all child serving systems to better marshal resources and service delivery.
- a strong case management system supporting informal alternative hearings and dispositions by volunteer magistrates as well as an official integrated trial and disposition system designed to achieve constructive lasting behavior change.
- extensive evaluation tools to determine health and education profiles, and risk-need assessments to underpin behavior management and proper service delivery with access to short term secure residential care for further diagnosis when needed.
- a well trained and experienced staff of probation and counseling personnel using tested drug and alcohol, anger management, sex offender, self-control, and victim awareness training programs.
- an intensive probation regime including electronic monitoring, drug testing, and community supervision
- a full complement of Court Appointed Special Advocates, Guardians Ad Litem, and Public Defenders serving children before the court..
- a state of the art detention facility providing safe, clean, secure, well-ordered care of all children, including medical and educational services and well-monitored suicide prevention.
- a court-operated American correctional Association (A.C.A.)-approved eighty-eight acre campus style residential training school for one-hundred-forty youth, delivering a broad range of services over six to nine months with intensive aftercare.
- a well-used work detail and restitution program teaching accountability and good work habits, rendering substantial benefit to public and non-profit community work sites.
- a family crisis intervention unit designed to intercept and control early truancy, runaway, and incorrigible behavior and diverting families to various commu8nity service agencies.
- an in-school truancy court operated by court magistrates in inner-city primary schools, enabling early identification of at-risk children supported by a non-profit family service agency and various corporate sponsors.

The court is also served by an array of resources such as:

- a non-profit managed care organization jointly funded by the county department of human services, the mental health and mental retardation boards, the drug and alcoholism board, and the court, serving approximately three-hundred multiple needs children who require extensive supervision and care.
- various non-profit agencies such as runaway shelters, pre-disposition residential care for youth who would otherwise be confined in the court's detention facility, drug and alcohol rehabilitation facilities, post-incarceration residential training centers, and programs for unwed mothers.

Our county has formed a broad-based board under the title "The Family & Children First Council," consisting of eighty agencies and organizations which together formulate and implement a unified county services plan.

Throughout, the Juvenile Court exercises a monitoring and accountability role and maintains final authority to determine best interests and safety for all children coming under its jurisdiction.

With such a comprehensive community-based and supported system in place in Cincinnati, we are able to keep most young offenders at or near their homes and

relatives. This is true of even many of the most serious offenders, for example, children our court finds have committed aggravated assault, robbery, rape or other sexual assaults, not to mention theft and other property crimes. We send relatively few on to state facilities, and few are transferred to criminal court for trial as adults.

Recent OJJDP conclusions from years of research and findings on Serious and Violent Juvenile Offenders note that this type of offender is "substantially different from the typical juvenile involved in delinquent conduct, and . . . displays early minor behavior problems that lead to more serious delinquent acts." While on average the age of first contact with the juvenile court for male *Crime Index* offenders is 14.5, their *actual* delinquency careers started much earlier with minor behavioral problems at age 7.0, progressed to serious behavioral problems at ge 9.5, and committing serious delinquency offenses at age 11.9.

COURTS, SCHOOLS SEE PROBLEM CHILDREN EARLY

Juvenile and family courts see many of these potentially serious and violent offenders (and/or their families) often at an early age, not as delinquents, but as abused or neglected children and typically later, but while still pre-adolescent, as less serious delinquent offenders.

Experienced teachers of even very young children often spot those who, without serious intervention, are likely to prove dangerous four or five years ahead. Experienced court professionals—probation officers, masters, referees, judges and others—have developed similar expertise. This is not a "seat of the pants" hunch thing. It is based on effective education and ongoing training in child psychology and child development as well as practical experience, especially in "good" institutional settings, courts, and schools with effective results.

Historically the court worked closely with churches, community organizations, medical and mental health facilities, and especially with schools, until the sixties and seventies' advent of the "DSO" (Deinstitutionalization of Status Offenders) movement which essentially sought to remove the truancy and related (drinking, smoking, and running away children) jurisdiction of the court. Billed as modern "reform," this movement supported by federal executive branch agencies as well as Congress until the early eighties, sought in effect to remove the court from the community and especially from the long-standing cooperation with schools. The court was there to *try cases, period*. DSO advocates maintained. Public schools and public child welfare and child support agencies will better take care of problem children, *unless* they actually commit adult crimes, the advocates said.

DSO SOUGHT TO SEPARATE COURTS FROM THEIR COMMUNITIES

The DSO movement promoted development of non-traditional, voluntary resources for problem children, mainly through federal and state grants and subsidies. But all too often (as in the case of the allied movement for deinstitiutionalization of mental health facilities), it left the intended young beneficiaries of its advocacy adrift on the streets, fallen "between the cracks." Schools carried chronic truants, disruptive children, even dropouts on the books so as to receive more state aid, "per pupil unit," but didn't want them back. Law enforcement could not hold children on the streets for referral to professionals to assess their circumstances, only return them to where they said was home. Schools could not refer truants to the court, only to law enforcement if they had apparently actually committed an adult crime. In short, DSO did no favor for most of these children, disrupted public schools, and all too often left the courts powerless to deal with truant, incorrigible or chronic runaway children, even when their own parent, the school or a neighborhood agency had given up, and *wanted* the court to intervene.

When schools and courts were prohibited by DSO from collaborating in cases of young truants and incorrigible children their schools and parents could (or would) not handle, everyone lost out. In these difficult cases only the court has the authority to bring in the parent(s) and require a professional assessment of the child.

More recently, since states that had caved in to federal pressure and restricted the court's jurisdiction have now reinstated it, schools in most states are again utilizing court expertise and resources for assistance in these cases. Specially trained probation officers are invited into the schools, evening sessions when parents must be present are held to work out and monitor plans for the child, etc.

Our highly successful primary school program to reduce truancy in Cincinnati started in 1989, and such programs are proving successful in many locations across the country, for example, in Pennsylvania after the law was changed back three years ago.

A number of state legislatures have enacted new laws allowing even elementary schools to expel children for sexual assault, possession of firearms, brandishing

knives or selling drugs at school or during school sponsored activities. Similar proposed legislation in other states, including parental responsibility provisions will place additional responsibilities and require more resources for juvenile and family courts, as will establishment of juvenile drug and/or gun courts as is now being recommended by OJJDP.

NEW FEDERAL POLICIES

So far as Serious and Violent Juvenile Offenders are concerned, federal policy now emphasizes need for "systematic mechanisms for effective routine screening of children who are exposed to adverse circumstances or who exhibit behaviors that place them at high risk of becoming serious and violent juvenile offenders." This policy recognizes that parents, churches, schools and neighborhoods constitute the main resources for preventing problem youth from moving up to serious and violent offending. The juvenile justice system should enter the picture when the efforts of these primary socializing agents fail to produce law-abiding youth.

The policy recognizes that juvenile and family courts are in a key position to recognize problems of family violence, child abuse and neglect, school truancy and drug abuse that daily come before them. The policy places a high priority on the need of these courts for *enhanced resources* for assessment purposes to systematically find those cases appropriate for early intervention, and to access needed services and facilities.

This policy calls for communities to coordinate the too often fragmented services and resources that should be brought to bear on the problems of potentially dangerous children. "Integration of services is often lacking and there are no firm guidelines for identifying those who should receive intervention and/or sanctions" the OJJDP report states in its section on "The Importance of Infrastructure and Accountability." Each community, together with the assistance of the juvenile and family court, should assign the responsibility for prevention education, screening and early intervention to an existing agency or coalition or establish a new entity for this purpose. There was a strong consensus (of the 22 member study group which worked for two years), concluding "that adequate resources and specific mandates must be given to a public entity to focus on the prevention of serious and violent juvenile offending, the coordination and integration of services, and accountability for success."

GRADUATED ACCOUNTABILITY-BASED SANCTIONS

Accountability-based sanctions must be: sure, swift, and consistent; designed to repair harm caused by the offender; based in the offenders community; flexible and diverse enough to fit a variety of situations and types of offenders; and sufficiently graduated to respond appropriately to every misstep in a delinquent's career, from first to last. The concept encompasses community and system accountability as well as individual accountability.

With this foundation, local and state governments can rework their juvenile justice systems so that they are speedy, efficient, and accountable for consistent outcomes; improve information collection and encourage information sharing; offer a variety of accountability-based programs; and respond to offenses in a firm and consistent manner.

Programs for delinquents vary from jurisdiction to jurisdiction depending on many factors. Clearly all courts and communities should give special attention to all first-time offenders and must have effective policies/programs/sanctions for children who shoplift, steal vehicles, use and/or deal in drugs or are gang members. Sex offenders and arsonists are other groups requiring special program/sanctions. In some large jurisdictions special dockets are appropriate for drug offenders (drug courts). Probation programs vary in intensity from informal supervision to house arrest. School-based probation as noted above works well in Cincinnati and in many other jurisdictions, as do teen courts/peer jury programs. Then there is the whole range of community service, restitution, fines and fees, victim-offender mediation programs.

Alternative schools, day or evening custody/treatment, out or in-patient mental health and alcohol/drug treatment, drug testing, boot camps, halfway houses and aftercare especially following incarceration—all of these are programs effectively employed in some jurisdictions.

Components appropriate in some cases include monitoring, tutoring, victim awareness, anger management, or job skills training, family counseling and family crisis intervention.

Screening and assessment is key as appropriate with respect to risk, drug and alcohol, health and mental health, education and job skills.

All courts/probation departments should have formal criteria for detention and of course expedited processing, by way of special dockets if appropriate for serious and violent juvenile offenders.

Only a well-administered court/probation department can successfully implement a graduated, accountability-based sanctions system and no jurisdiction with a heavy volume of cases can be well-administered without the technology, training and an effective management information system. Furthermore, information sharing is necessary between courts/probation and law enforcement, prosecutors, schools and community agencies and programs.

NCJFCJ believes that juvenile offenders who commit repeated offenses should receive graduated sanctions; that is, each conviction should result in its own consequences and those consequences should be enforced. However, we also believe that the specific types of sanctions imposed should be selected by state judges with appropriate input from the prosecution and defense.

RECORD KEEPING

In today's mobile society many juveniles reside in more than one jurisdiction during the years they would be subject to juvenile court jurisdiction. We believe that complete, accurate information about a juvenile's prior record, including offenses committed in other jurisdictions, should be available when making decisions involving the juvenile within the system. We encourage the federal government to help fund efforts to coordinate and improve the availability of juvenile records to police, prosecutors and courts.

NCJFCJ believes that judicial as opposed to prosecutorial or legislative discretion (except in capital cases) should be applied in sentencing decisions and in the decision to transfer a juvenile offender to criminal court for trial. The juvenile court judge generally has first hand knowledge of the offender, his prior record, his response to prior sanctions, incarcerations and services.

NCJFCJ believes that provision for prevention and early intervention programs for deprived children and adequate funding for such programs should be a key component of any comprehensive federal juvenile justice legislation.

NCJFCJ urges Congress to maintain the integrity of the juvenile justice agency and not to allow the scattering of key functions to other Office of Justice Programs agencies. For example, collection, analysis and documentation of information on children in the system and control of the juvenile justice research agenda and funding are functions that should not be separated from the agency. Without them there will be no effective ongoing evaluation of either juvenile justice system reforms or of the agency programs' effectiveness in impacting on the system.

Congress should provide for adequately for education, training and technical assistance for courts and court-related personnel, as well as for other components, law enforcement, corrections, etc.

Congress should maintain a balance between discretionary and block grant and/or "formula" funding to state and local jurisdictions. In the past this balance has been 80/20 with the 20% retained by the agency to provide for Evaluation, Technical Assistance, Demonstration Programs, Education and Training, Research, Statistical analysis, Information Dissemination, as well as for federal level administrative expenses. All these discretionary functions are important in a comprehensive program such as OJJDP which seeks to address change in virtually every aspect of juvenile justice. While increased overall funding and/or shifts from formula to block grant funding may reduce the discretionary share, neglect of adequate funding of these discretionary functions will impair the overall effectiveness of OJJDP and of the federal effort.

Thank you, Mr. Chairman for inviting me to testify here this morning for the National council of Juvenile and Family Court Judges. We are available to answer your and members' questions and those of your fine staff, or to provide information or ideas. Please call on us anytime.

Mr. MCCOLLUM. Thank you very, very much, Judge Grossmann.

I think, Judge West, we could proceed. We probably have 5 minutes literally, but it might be more comfortable for you if we took a recess right now so that we do not press you, and that is what we will do.

We have one vote and then followed immediately by another, but I think we will probably be back around a quarter of. About 15 minutes from now would be my best estimate.

The hearing is in recess.

[Recess.]

Mr. MCCOLLUM. The Subcommittee on Crime will come to order.

I certainly know now the world is full of surprises. We went over there and did not have the kind of delay that we thought we could, and they had what we call suspension votes, for those of you who are familiar, which means they were left over from yesterday, and we went through a series of those votes.

But we are back here, I think, for a while now, and we are reconvened and if we can try to stick to about 5 minutes each, I think we can work through your testimony, have some good questions, and complete this hearing in time for you to make your planes and so forth.

Judge West, I think Judge Grossmann had finished. Judge Grossmann, go ahead.

Mr. GROSSMANN. I just wanted to mention that I believe Congressman Horton mentioned to you I had an early flight. I have changed the flight. So I am here at your disposal until.

Mr. MCCOLLUM. Well, we appreciate your being very accommodating to us, but we have to be out of here for another hearing in this room at about two.

Mr. GROSSMANN. Good.

Mr. MCCOLLUM. So will definitely be working toward a one o'clock time line if we can.

Judge West, we have not heard from you. We are looking forward to it, and the microphone is yours.

STATEMENT OF PATRICIA WEST, JUDGE, JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT, VIRGINIA BEACH, VA

Ms. WEST. Thank you, Mr. Chairman.

And thank you for the opportunity to be here with you today to talk about a subject that is really near and dear to my heart. Almost my entire career has been spent in the field of juvenile justice, and so I am very happy and pleased to be here.

I have been fortunate as my career has progressed to view the juvenile justice system from a variety of perspectives, from prosecution to correctional administration, which included responsibility for juvenile correctional centers, as well as juvenile probation and parole services, and finally now as a judge who hears juvenile delinquency cases on a daily basis.

I will tell you that the single overriding theme that I have stressed in all of my various roles is accountability, including rehabilitative services, if appropriate and needed, as well as punishment, and that was even at a time when that was a very unpopular term when used in connection with juvenile justice, and maybe it still is. I do not know.

But the concept of graduated sanctions, which is what I am here to endorse today and feel very strongly about, really is the embodiment of accountability. I feel that very, very strongly, and I think this is a very important program and system that we are moving towards.

I want to first share an experience that I had in 1993 when I was a Deputy Commonwealth's Attorney in Norfolk that remains very, very vivid in my mind, and frankly, it served an incentive for my future efforts in juvenile justice reform.

I was speaking with a defense attorney who represented a juvenile charged with a couple of felonies. Breaking and entering and grand larceny, I think, is what they were. I proposed a disposition that included supervised probation, restitution, and community service, which seemed appropriate and consistent with our available resources, and not particularly harsh I did not think, and the defense attorney looked at me and really in all seriousness and with a certain amount of indignation said to me, "Come on. You know the first felony is free."

And I really think that was a turning point for me. What an indictment on the system and what a wake-up call for the needed reforms and changes that we have seen over the past few years.

To underscore the importance of the concept of graduated sanctions, it is important to describe what the system looked like without graduated sanctions. During my years as a prosecutor, the typical disposition pattern that a juvenile offender could expect would go something as follows.

The first one, two, maybe even three or more contacts, depending on the nature of the contact, with the criminal justice system did not even result in a court appearance. The police officer would give warnings, or juvenile intake would diver the juvenile to treatment or services.

After intake finally felt that they had exhausted all nonjudicial intervention options and that the juvenile was continuing to get in trouble, a petition would be filed on the next offense, and the juvenile would come to court. It was the first offense in the sense that it was the first time he was before court.

At that point in time, typical disposition would be unsupervised probation. That usually consisted of telling a juvenile to obey his parents' rules and maybe ordering them to comply with certain conditions specified by the court, like go to school every day, obey your curfew.

The juvenile's next time in court might result in another tried unsupervised probation or perhaps he might move up to supervised probation. On supervised probation, the juvenile would receive probation rules and might be required to go to counseling, some other type of treatment program, something like that.

The next time the juvenile was in court, it would likely result in continued supervised probation, and I will tell you that as a prosecutor we sarcastically called it double super secret probation. It did not really have any additional meaning to the kids, but that was really one of the only things we had.

You might get a suspended commitment to the Department of Juvenile Justice finally after many contacts, and usually out of frustration on the part of judges and the probation staff because there was nothing left to do. He might be committed to the Department of Juvenile Justice, but even then the juvenile offender could be back in the community before his paper work on the commitment was even completed.

And let me tell you what the juvenile's reaction was when he was committed. It was disbelief. It was amazement, and that was because he could not understand why he had committed all of these crimes in the past and nothing happened to him, and now all of a sudden we are locking him up. There was a disconnect for them.

In his mind, these things like supervised probation, even supervised probation had no consequences for them. There was nothing tangible that they could put their finger on that had happened to them because of their criminal activity.

Another flaw inherent in the way the system worked was that once the court decided to take action, the service or sanction that was imposed would often be inappropriate for the offender's level of criminality. This was usually a function of judges trying to preserve scarce resources and programs for more problematic individuals, but what it succeeded in doing was making programs which might have been effective failures because they were filled with inappropriate juveniles.

The best example I can think of was a program that we had in Virginia Beach where juveniles were required to wash police cars. That would be part of their sentence. In theory it was a great idea. The juvenile had a tangible consequence and the city received a benefit.

Well, as I stated earlier, a juvenile had often acquired a substantial unofficial record before he ever came to court. So as a result, the juveniles who were assigned to this program were already well along their way on the path of becoming a career criminal.

It was not long before that program had to be discontinued because the kids were vandalizing the police cars. This is a perfect example of a program that might work very well for a true first offender, but failed miserably because inappropriate juveniles were being assigned to the program.

A system that fails to provide consistent and appropriate sanctions for each and every offense reinforces criminal behavior and gives juveniles the impression, and rightly so in many cases, that they can break the law with impunity.

As a prosecutor, I faced a dilemma each time I spoke to juveniles about the system because if I were to be complete truthful with them, I would have to tell them they could probably commit quite a few crimes before consequences that they deemed significant would happen. The fact is though I would likely have been telling many of them something they already knew.

Juveniles, especially the ones most likely to be involved in the system, often know how that system works. They know it better than a lot of attorneys. I will tell you that, and juveniles viewed the system as a joke. Literally they did.

I cannot tell you how many times police officers would tell me that juveniles would say to them, "You cannot do anything to me. I am a kid. I am a juvenile."

As a prosecutor, I would take special interest in trying to show them they were wrong, but did not always succeed. A lot of times they were right.

Because of the increase in numbers and the escalating severity of juvenile crime, along with the public's outrage at a secretive system that they did not believe was protecting them, many States, including Virginia, sought to change the way juvenile courts did business.

In 1995, when I was Director of the Department of Juvenile Justice, I had the privilege of serving on Governor Allen's Commission

on Juvenile Justice Reform. That commission was the catalyst for sweeping changes in all areas of juvenile justice in Virginia.

But while the transfer provisions, the DNA sampling, the public access to juvenile records received the media attention, the less publicized or equally important concept of accountability and graduated sanctions was endorsed as well. The number of intake diversions was limited, and while sentencing guidelines are not easily adopted in the juvenile courts because of the individuality of each case, as well as the fact that jurisdictions have differing problem areas and resources, the idea of each offense resulting in a tangible consequence was strongly promoted.

It required a cultural change, a change in the attitude from a treatment, best interest of the child mentality to the common sense and easily understandable concept that criminal actions result in certain consequences.

It is important to note that an accountability concept as it is promoted through graduated sanctions is in the best interest of the child and that we really do the juveniles no favor by excusing their illegal behavior.

It is also important to realize that the graduated sanction approach is not mutually exclusive with providing rehabilitative services. The two complement each other very well.

State reform efforts have not been about dismantling the juvenile justice system, but have been about strengthening it. Strengthening the juvenile justice system is what I believe the Federal reform efforts are all about, as well, and that is why I am here to urge Congress to promote the implementation of graduated sanctions which make the system more effective.

Encouraging States to promote the concept of graduated sanctions is vital, just as vital as the recognition that although the philosophy of graduated sanctions needs to be endorsed and promoted by State governments, it is the localities that will actually implement the programs.

Having said that, I encourage you to renew the accountability for juvenile offenders and public protection incentive grants with a general provision requiring States to move toward a juvenile justice system utilizing graduated sanctions, yet maintaining flexibility for implementation by the localities.

The localities should be encouraged by the Federal and State governments to adopt the sanctions, the graduated sanctions, that fit the needs of their specific community. A one size fits all approach dictated by either the State or the Federal Government is doomed to fail because the problems of the localities are varied. They need the maximum flexibility to address their individual concerns.

I thank you, once again, for this opportunity to give you my views. I will answer any questions later.

[The prepared statement of Judge West follows:]

PREPARED STATEMENT OF PATRICIA WEST, JUDGE, JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT, VIRGINIA BEACH, VA

Thank you for the opportunity to be with you this morning to address a topic that has been the single most defining issue of my career, juvenile crime.

I specifically want to address the concept of graduated sanctions; a concept that is vitally important to the success of the juvenile justice system. Graduated sanc-

tions result in juvenile offenders receiving a tangible consequence, punishment if you will, for every criminal act, and further, the severity of consequences will in most cases increase with each offense. The punishment may well be combined with treatment or services, but the key principle is that each and every court contact is a meaningful event for the offender.

I have been fortunate as my career has progressed to view the juvenile justice system from a variety of perspectives; from prosecution to correctional administration which included responsibility for juvenile correctional centers as well as juvenile probation and parole services, and finally as a judge who hears juvenile delinquency cases. The single overriding theme that I have stressed in my various roles is accountability, including rehabilitative services if appropriate and needed, as well as punishment, even when the concept of punishment was not particularly popular (and maybe it still isn't) or accepted by the "juvenile justice professionals". The concept of graduated sanctions is the embodiment of accountability.

At one point in time not too long ago, holding juveniles accountable for their crimes was easier said than done, both because of attitudes among people in the system and the lack of sentencing options available. First, there was a commonly held belief that punishment had no role in the juvenile justice system. You only have to look as far back as the Virginia code prior to 1996 where the purpose and intent of the juvenile and domestic relations district courts was defined with the singular stated goal of promoting the best interest of the child before the court. While that was fine in abuse or neglect cases and in custody, visitation and support cases, it was woefully inadequate in delinquency proceedings. Fortunately, in 1996, public safety and the protection of victims' rights were added as proper considerations for the court in delinquency proceedings. These two additions to the purpose and intent clause were significant, both practically as well as symbolically, but let me add that I for one never saw a conflict between the concept of punishment and the singularly stated purpose of pursuing dispositions in the best interest of the child. In most cases, even though the juvenile may not realize it, punishment which may have a corrective impact on the juvenile's behavior, is in their best interest.

Although I have consistently argued for accountability and consequences for criminal behavior, more often than not, the disposition was unsatisfactory to me, the victim and the general public. Again, that was because of the traditional notion that there was no room for retribution in the juvenile justice system, and also because the options for disposition were limited by resources. I will address the typical disposition pattern of a repeat juvenile offender in detail a little later, but I raise this issue now to make the point that although outdated philosophical views guided some judges resulting in the ineffective handling of delinquency cases, in some cases it was a lack of resources and options that caused failures in the system. Many judges did the best they could with what they had, acting within the statutory confines prior to 1996. Fortunately, Virginia has taken a very active approach in addressing both the philosophical shortcomings of the system as well as the shortage of resources devoted to the system. During Governor George Allen's term, appropriations from the state to the juvenile justice system statewide (including appropriations to localities) increased over 50%. States like Virginia have shown their commitment to improving their juvenile justice system process, and I urge Congress to assist them in their efforts.

An experience I had in 1993 when I was Deputy Commonwealth's Attorney in Norfolk remains vivid in my mind and frankly, served as an incentive for my future efforts in juvenile justice reform. I was speaking with a defense attorney who represented a juvenile charged with, I believe, burglary and grand larceny which were this particular juvenile's first felony charges. I proposed a disposition involving supervised probation, restitution and community service which seemed appropriate, consistent with options available, and not particularly harsh for two felony charges. The defense attorney looked at me in all seriousness and with a certain amount of indignation said, "Come on, you know the first felony is free!" Unfortunately, his statement was all too accurate and conformed with common practices in juvenile court at that time. What an indictment on the system, and what a wake up call for change.

To underscore the importance of the concept of graduated sanctions, it is important to describe what the system looked like without graduated sanctions. During my years as a prosecutor, the typical disposition pattern a juvenile offender could expect was the following: The first one, two, maybe three or more contacts, depending on the nature of the contact, with the criminal justice system did not even result in a court appearance. The police officer would give warnings or juvenile intake would divert the juvenile for treatment or services. After intake finally felt that they had exhausted all non-judicial intervention options and the juvenile was continuing to get in trouble, a petition would be filed on the next offense, and the juvenile went

before the court. A typical "first offense" disposition (first in the sense it was the first offense to come before the court) would be unsupervised probation which usually consisted of telling a juvenile to obey their parents' rules and perhaps ordering them to comply with certain rules specified by court order; for example, go to school everyday, obey curfew, etc.. The juvenile's next time in court might result in another try at unsupervised probation, or perhaps the juvenile might move up to supervised probation. On supervised probation, the juvenile would receive probation rules and might be required to go to counselling or some other type of treatment program. The next time the juvenile was in court would likely result in continued supervised probation (or as we prosecutor's sarcastically dubbed it, double super secret probation) or a suspended commitment to the Department of Juvenile Justice. Finally after many contacts and usually out of sheer frustration on the part of judges and probation staff, the next contact with the system might result in a commitment to the Department of Juvenile Justice, but even then, the juvenile offender could be back in the community before the paperwork on his commitment was complete. And the juvenile's reaction to commitment; disbelief, amazement. Why? Because the system had not done anything to him before for all the crimes he had committed, at least in his mind. To a juvenile, diversion, unsupervised probation, supervised probation, suspended commitment all meant that he walked out of the courtroom and that "nothing happened", and truly, nothing tangible and concrete had happened.

Another flaw inherent in the way the system worked was that once the court decided to take action, the service or sanction that was imposed would often be inappropriate for the offender's level of criminality. This was usually a function of judges trying to preserve scarce resources and programs for more problematic individuals, but what it succeeded in doing was making programs which might have been effective, failures because they were filled with inappropriate juveniles. The best example I can think of was a program we had in Virginia Beach where juveniles were required to wash police cars as part of their sentence. In theory, it was a great idea; the juvenile had a tangible consequence and the City received a benefit. Well, as I stated earlier, a juvenile had often acquired a substantial unofficial record before he ever came to court. As a result, the juveniles assigned to this program were already well along the path to becoming career criminals. It was not long before the program had to be discontinued because of vandalism to the police cars. This is a perfect example of a program that might work very well for a true first offender but failed miserably because inappropriate juveniles were being assigned to the program.

A system that fails to provide consistent and appropriate sanctions for each and every offense reinforces criminal behavior and gives juveniles the impression (rightly so in many cases) that they can break the law with impunity. As a prosecutor, I faced a dilemma each time I spoke to juveniles about the system because if I were to be completely truthful with them, I would have to tell them they could probably commit quite a few crimes before consequences that they deem significant would happen. The fact is though, I would likely have been telling many of them something they already knew. Juveniles, especially the ones most likely to be involved in the system, often know how the system works better than many attorneys, and juveniles viewed the system as a joke.

Because of the increase in numbers and the escalating severity of juvenile crime, along with the public's outrage at a secretive system they did not believe was protecting them, many states, including Virginia, sought to change the way juvenile courts did business. In 1995, when I was Director of the Virginia Department of Juvenile Justice, I had the privilege of serving on Governor Allen's Commission on Juvenile Justice Reform. That commission was the catalyst for sweeping changes in all areas of juvenile justice in Virginia, but while the transfer provisions, DNA sampling and public access to juvenile records received the media hype, the less publicized but equally important concept of accountability and graduated sanctions was endorsed as well. The number of intake diversions was limited, and while sentencing guidelines are not easily adopted in juvenile courts because of the individuality of each case as well as the fact that jurisdictions have differing problem areas and resources, the idea of each offense resulting in a tangible consequence was strongly promoted. It required a cultural change; a change in attitudes from a treatment, best interest of the child mentality to the common sense and easily understandable concept that criminal actions result in certain consequences. It is important to note that the accountability concept as it is promoted through graduated sanctions is in the best interest of the child and that we do the juvenile no favor by ignoring or excusing his illegal actions. It is also important to realize that the graduated sanctions approach is not mutually exclusive with providing rehabilitative services. The two complement each other.

State reform efforts have not been about dismantling the juvenile justice system but have been about strengthening it. Strengthening the juvenile justice system is what I believe the federal reform efforts are all about as well, and that's why I'm here to urge Congress to promote the implementation of graduated sanctions which make the system more effective. Encouraging states to promote the concept of graduated sanctions is vital. Just as vital is the recognition that although the philosophy of graduated sanctions needs to be endorsed and promoted by state governments, it is the localities that will actually implement the programs. Having said that, I encourage you to renew the Accountability for Juvenile Offenders and Public Protection Incentive Grants with a general provision requiring states to move toward a juvenile justice system utilizing graduated sanctions yet maintaining flexibility for implementation by the localities. Localities should be encouraged by the federal and state governments to adopt graduated sanctions that fit the needs of their specific community. A one size fits all approach dictated by either the state or the federal government is doomed to fail because the problems of localities are varied. The localities need maximum flexibility to address their individual concerns.

Thank you once again for the opportunity to be here today, and I would be happy to answer any questions you may have.

Mr. MCCOLLUM. Thank you very much, Judge West.

Before I call on Mr. Sukhia, we have been joined by Mr. Chabot, and I believe you have a constituent on our panel, and you would like to make a remark about it.

Mr. CHABOT. I certainly do, Mr. Chairman, and I apologize for running a little bit late in that I had three other committee hearings going on at the same time, and we were obviously interrupted by a series of votes on the floor.

But I wanted to welcome Judge David Grossmann, who was a distinguished judge of the juvenile court for many years in Hamilton County, Ohio, which is the county that Cincinnati is contained within, and he has just been a dynamic leader in the area of improving juvenile justice both at the local level and at the Federal level.

So we are certainly happen to have him here, and, Judge, I will certainly read the remarks that I missed that you made before, but I wanted to welcome you again to Washington. You have spoken here a number of times before and have really been a leader nationally in improving the juvenile justice system.

Thank you.

Mr. MCCOLLUM. Steve, maybe Judge Grossmann's ears would have been burning in that sense, but we all think the same thing you did, and I made those remarks earlier. So we are delighted to have your constituent here.

I have one who is not a constituent directly, but a friend for many years, former U.S. Attorney, Ken Sukhia from Florida, and he is our next witness.

So, Mr. Sukhia, if you would proceed with your testimony, please.

STATEMENT OF KENNETH W. SUKHIA, ESQ., FOWLER, WHITE, GILLEN, BOGGS, VILLAREAL AND BANKER, TALLAHASSEE, FL

Mr. SUKHIA. Thank you, Mr. Chairman and Congressmen. I appreciate the opportunity to be here.

I would echo the remarks of the chairman about the problems in general of crime in our country. Although there have been some recent positive trends, our Nation still remains among the most violent in the world, and much of this problem can be attributed to an increase in juvenile crime over the last two decades.

In fact, if you look at the statistics, they are somewhat alarming as to the amount to which the juvenile offenses have contributed to the overall increase in violent crime in our Nation during these last two decades. In fact, murders among juveniles are up 90 percent during that period. Aggravated assault is up 78 percent. Robbery is up 110 percent.

Unfortunately, my home State of Florida has done more than its share to contribute to this overall crime problem. In fact, for 17 of the last 18 years, Florida has ranked as the highest crime State and the most violent crime State in the Nation.

Sadly, statistics reflect that Florida has done not much better when it comes to juvenile offenses. In Florida last year we had about 150,000 juvenile arrests. Of those, 12,000 were for violent felonies. About one in every five persons arrested in Florida in the last year was a juvenile. Once every 4 days a juvenile in Florida is arrested for murder. Rates of crime, according to FDLE Commissioner Tim Moore, for 1997, which was the most recent year that they reported on, rates of crime for juveniles for murder, sex offenses, and robberies were all up.

But the one category which was up more than any other and which is among the most alarming is the juvenile use of drugs and involvement in the drug culture and distribution world.

In fact, in central Florida last year, the incidence of those who died of overdose from the use of heroin, most of whom were juveniles, was up some 500 percent from the year before. Thirty-one persons died of heroin overdoses last year in central Florida alone.

I am a person who has spent a number of years in the criminal justice system, having served as an Assistant U.S. Attorney for some 10 years and then as the U.S. Attorney for some 3 years, and I have had some experience in my work with the devastating effect that an ineffective juvenile justice system can have.

Despite the some 12,000 violent felony offenses committed by juveniles in Florida, we had an average daily population in the juvenile justice system of 2,080 last year. Despite the fact that we had 4,660 juveniles who were transferred for treatment to the adult system, only 15 percent received any sentence whatsoever because the judges in the adult system either are not given the tools necessary to effectively deal with these violent juvenile offenders or they are reluctant to impose sentences upon them for their first appearance in the adult system.

Although some 25,000 juveniles were transferred to the adult system in the last 5 years, there are currently only 597 juveniles in the entire Department of Corrections system in Florida.

Much fanfare was given to the transfer provisions, but when you look behind them, you find that there is really not a lot going on there. You have 5,000 beds in the juvenile justice system, despite the fact that you have 150,000 juvenile offenses last year. So of those 12, you ask yourself, what has happened to those 12,000 violent juvenile offenders, those who have committed the crimes which we would consider to be the worst of the worst among those juveniles, when 4,600 of them got transferred to the adult system and received no time, and the average length of time served in the juvenile system was 11 days, and there is a 91-day waiting period, some nine times longer than the average stay.

So you have obviously, in my view, a system that is not functioning properly.

I mentioned that I had had some experience with this. The last case I prosecuted as United States Attorney was a carjacking case. In fact, I believe from my understanding it was the first carjacking trial to be handled in the U.S. under the new Federal carjacking provision, and we have five persons who were involved in that offense. They shot a 72 year old man in Ocala, abducted a 19 year old in Gainesville. Two of them were 13 years old, two were 18 years old, and one was 19.

When I got behind these offenders and had a change to look into their juvenile offenses, I learned that they had collectively numerous prior arrests for attempted murder, aggravated assault, armed robbery, and auto theft. In fact, one of the 18 year olds in the group a year before had participated in a drive-by shooting. The 19 year old, when he was 16 years old, who incidentally was the trigger man in this offense, who shot the elderly gentleman; when he was 16, put a gun to the head of a lady, dragged her from her car, and drove off in it.

The State prosecuted him fully and he ended up getting a 1-year sentence and serving 4 months. Now, thankfully, with his first brush in the Federal system, he was removed from society for some good time, approximately 20 years.

But one of the juveniles, one of the 13 year olds, had a defiant attitude and, in fact, told me, "You cannot do a thing to me." He had scores of prior auto thefts in his background.

Well, since that time, I have gone behind this a bit and looked at some of the studies. Eugene Methvin has cited studies from a number of areas, including the University of California, and Marvin Wolfgang in Philadelphia showing that the failure to deal with juvenile offenders meaningfully and effectively the first time around in addressing their crimes is one of the primary determinates or indicators of whether that juvenile will become a habitual offender or whether he will simply be a person who had a juvenile offense in his background.

Whatever else can be said about this problem, both logic and my experience tell me that unless we have an effective means of dealing with first time offenders, we are going to disserve both society, who suffers from these offenses, and also the juvenile offender, who is taught through repeated unpunished misconduct to escalate his criminal behavior.

And, so I applaud this committee for its efforts to look at the problem. I have said much more in my written statement, and I thank you for the opportunity to be here.

[The prepared statement of Mr. Sukhia follows:]

PREPARED STATEMENT OF KENNETH W. SUKHIA, ESQ., FOWLER, WHITE, GILLEN, BOGGS, VILLAREAL AND BANKER, TALLAHASSEE, FL

A. The National Crime Picture and Juvenile Crime.

Despite recent positive trends, our nation continues to record one of the highest violent crime rates in the world. Since 1960, the population of the United States has increased some 43%, yet the number of violent crimes has increased over 500%. While violent crime is a rarity in some countries, in America someone falls prey to a crime of violence every 17 seconds and one of us is murdered every 25 minutes.

No small contributor to this epidemic has been the astounding increase in juvenile crime over the last 15 years. Between 1986 and 1995, the juvenile violent crime ar-

rest rate increased nationwide by 67%,while the corresponding adult increase was 31%. In 1997, nearly one of every five persons arrested in America for a violent crime was under 18 years of age, and nearly a third of those arrested for all crimes were juveniles.

The most alarming trend has been the increase in the number of juveniles involved in homicides. According to the FBI, the number of juveniles arrested for murder was 90% greater in 1995 than it was in 1986, although the number of adults arrested for murder in each of these years remained essentially the same. In other words, the entire 8% increase in the nation's murder rate in 1995 over 1986 was attributable to the increase in the number of juveniles arrested for murder. Startling increases in juvenile crime over the last decade were also recorded for other violent offenses including aggravated assault (up 78.3%), other assaults (up 110%), robbery (up 63%), auto theft (up 28%), and arson (up 40%).

We also cannot ignore the fact that our nation's youth are among the most likely to fall victim to crimes of violence. A study of juvenile crime victims by the Department of Justice revealed that youths aged 12 to 19 were victims of 1.9 million rapes, robberies, and assaults from 1985 to 1988 and that teenagers were three times more likely to be victims of violent crime than persons aged 20 or older.

B. Crime in Florida.

Unfortunately, my home state of Florida has done more than its share to contribute to this tragedy. For 17 of the last 18 years, Florida has recorded the highest overall crime rate and the highest violent crime rate in the nation, with a reported violent crime occurring roughly every three minutes. Florida has reported more than one million crimes for each of the last ten years, with an average of 150,000 violent crimes reported per year during the same period.

The tragic toll across our nation is measured not only in numbers, but in human pain. In Arkansas, three eight-year-olds are raped and murdered, allegedly by three teenage boys participating in a satanic ritual. In Texas, six teenagers are accused of mindlessly raping and strangling two young girls who stumbled onto a drug gang's initiation rite. In Florida, four youths are involved in the brutal and senseless murder of a British tourist at an interstate rest stop in a small rural community.

Recognizing that we must deter violence by dealing seriously with the crimes that spawn it, the federal government currently imposes tough mandatory sentences for drug trafficking and firearms offenses. Unfortunately, until very recently Florida and most other states had not followed suit. In 1992, more than two-thirds of the 140,000 persons convicted of felonies in Florida never made it to prison at all. According to a 1992 Newsweek article on Florida's failed system, the average Florida felon sentenced to four years in prison served only 3.7 months. The situation was so serious that two of Florida's State Attorneys actually sued the Parole Commission to stop early releases, noting that "law-abiding citizens are fed up with Florida's revolving door criminal justice." According to these State Attorneys, under the sentencing structure in place at that time, a residential burglar faced prison only after seven residential burglaries and a typical auto thief had to steal 17 cars before risking a prison term.

Contrast this with the federal system where parole has been abolished, criminals serve 87% of their terms, violent offenders face tough mandatory minimum sentences, and those who pose a danger to others are detained prior to trial. While no system is perfect and detractors may raise concerns over selected sentences, Americans undoubtedly would sleep better at night, and work in more safety by day, if every state's sentencing guidelines were as tough on crime as the federal system.

Indeed, our experience in North Florida bears this out. From 1990 to 1993, I was fortunate to serve as the United States Attorney for the Northern District of Florida. During this time, the Northern District of Florida was the toughest sentencing federal district in the nation, with average sentences more than double the national average and many months higher than the second ranking district. When papers across the nation carried stories about the tough federal sentencing patterns in North Florida, a number of the publications noted that crime rates in this region were lower than in similar communities. A *Pensacola News Journal* article on the same subject began by warning would-be federal criminals that they ought not to do their crimes in North Florida. The message was not lost on those who needed it most—the criminals themselves. More than once, undercover officers in other regions recorded smugglers urging their cohorts to stay out of the Northern District of Florida at all costs. Far from convincing us of the unjust nature of the federal sentencing patterns in North Florida, such reports tended to confirm the wisdom of the federal approach to sentencing in the Northern District of Florida.

Although Florida's response to the overall crime problem has improved slightly in recent years with the average length of incarceration gradually increasing, the situation is still far from acceptable. Of the more than 150,000 criminals convicted of felonies in Florida in 1997, only 20,000, or some 15%, received any prison sentence whatsoever. This means that for every 100 FBI index crimes reported to the police in Florida, only two people are sent to prison. During the period in which Florida ranked first in the nation in violent crimes, it also ranked among the lowest of all states in prison population per 1,000 violent crimes committed.

C. Juvenile Crime and the Juvenile Justice System in Florida.

1. The Juvenile Crime Problem in Florida.

The Florida juvenile crime statistics are even more alarming. According to figures released by the Florida Department of Law Enforcement, more than one of every five persons arrested in Florida in 1997 was a juvenile. During 1997, a Florida juvenile was arrested for murder every four days on average. In the same year, juveniles in Florida accounted for nearly 20 percent of all violent crime arrests throughout the state, placing Florida among the highest juvenile violent crime states in the nation. In 1997, over 149,000 juveniles were arrested in Florida. Approximately 12,000 of those were violent felony arrests. As Commissioner Tim Moore of the Florida Department of Law Enforcement noted in summarizing the most recent Crime in Florida Report, "The number of juveniles arrested for murder, sex offenses, drugs and robbery all rose in 1997."

2. Florida's Response to the Juvenile Crime Problem.

Despite this astounding level of juvenile crime, Florida had an Average Daily Population of only 2,083 youths in secured detention during FY '97–'98. During the same period, 4,660 juvenile offenders were certified for adult treatment and transferred to adult court for disposition. Only 15% (697) of those were sentenced to prison. Eighty-five percent (3,963) received probation or community control. Despite the fact that over the last five years 24,626 juveniles were transferred to the adult system in Florida, there are only 596 juvenile inmates currently in the Florida state prison system, including those on work release and in community control.

It is important to note that despite the current inadequacies of Florida's juvenile justice system, Florida's response to the problem has actually improved over the last five years. In the face of the enormous increases in juvenile crime in Florida from 1982 to 1992 (murder up 151%; attempted murder up 1,777%; auto theft up 304%; concealed firearms up 348%), and reeling from several internationally notorious and brutal crimes by juveniles against foreign tourists, the Florida Legislature allocated resources in 1994 to enhance the State's response to the juvenile justice problem. Despite the some 9,000 violent crime arrests of juveniles in 1989, there were at that time only 1,400 beds available in the entire juvenile detention system. At that time, juveniles who committed armed robbery had to wait an average of 285 days before receiving a slot in any juvenile detention facility. Since then, the Legislature has added about 2,800 beds. As a result, detention admissions were 63% higher in FY '95–'96 than in FY '91–'92. While any increase is better than none, the added spaces have still not kept pace with the increase in violent juvenile offenses during the same period. In FY '95–'96 Florida youths committed 171,000 offenses including some 12,000 violent felonies, while youth detention space did not exceed 5,000 beds. As a result, in 1997 there were 1,109 juveniles on the waiting list for placement within the state's juvenile commitment facilities.

Even with this modest increase in youth detention facilities, we have begun to see a decrease in the overall juvenile crime rate in Florida. It is too soon to tell whether the trend will continue. Given that Florida still ranks among the highest in the nation in violent juvenile crime, it is clear that much has yet to be done.

3. Case Studies and Experience of Those Working in the System.

I have seen firsthand the devastating effects of a an ineffective juvenile justice system. One of the last cases I prosecuted as United States Attorney was a carjacking case out of Gainesville, Florida. Five persons, including one 19-year-old, two 18-year-olds and two 14-year-olds, shot a 72-year-old man in Ocala and later abducted a 19-year-old college student in Gainesville. As it turned out, the defendants collectively had numerous prior juvenile arrests for such offenses as attempted first degree murder, aggravated assault, and assault and battery, and one of the juveniles had dozens of prior auto theft arrests in his background. Despite these arrests, the juvenile displayed a defiant attitude, telling me that he had never served a day in jail and that "you can't touch me." Two years before he committed the carjacking in our case, and while he was a juvenile, one of the 18-year-olds in the group participated in a drive-by shooting. When he was 16, the 19-year-old

triggerman in the group brandished a firearm, pulled a lady from her car, yanked the purse from her shoulder and drove off in her vehicle. Remarkably, after being convicted in the Florida system for that offense, the man served only four months and was released. Thankfully, in his first experience with the federal system he was convicted after jury trial and sentenced to 20 years in federal prison with no parole in our carjacking case. Ironically, even though we were the federal prosecutors in the case, we only learned of the prior juvenile offenses because we were working closely with the State Attorney to pursue the juveniles through the state system.

Not surprisingly, the juveniles responsible for the murder of the British tourist referred to above also had extensive prior arrests in the juvenile system without having been subjected to any meaningful punishment in the past. Two of the boys were 16 and the other two were 13 and 14. They were charged with first degree murder, attempted first degree murder, and auto theft. According to newspaper accounts at the time, the 13-year-old arrested for the crime had a record of 15 arrests on more than 50 charges. The local School Superintendent commented that "some of these kids have arrest records you wouldn't believe."

As discussed by Eugene Methvin in the Summer of 1997 issue of *Policy Review*, studies at the University of Southern California and by criminologist Marvin Wolfgang in Philadelphia, revealed that swift and certain punishment for convicted felons in the early stages of their criminal activity is a most effective means of suppressing crime.

In his *Policy Review* article, Methvin cited numerous studies confirming that society's failure to take punitive action in dealing with first-time youthful offenders is a primary factor contributing to the development of habitual criminals. As Mr. Methvin noted, "a troublesome youngster typically has ten or 12 contacts with the criminal-justice system and many more undiscovered offenses before he ever receives any formal 'adjudication,' or finding of guilt, from a judge. He quickly concludes that he will never face any serious consequences for his delinquency." Our experience in Florida clearly bears this out.

State Attorney Harry Shorstein from Duval County has consistently advocated and implemented a strategy of early intervention with punishments of graduated severity for youthful offenders. Mr. Shorstein notes that "it is from age 11 to age 18 that criminals are the most violent and most prolific . . . yet, almost all of our crime-fighting money at every level of government goes to fighting crimes" perpetrated by adult offenders. Accordingly to Mr. Shorstein, "that's the biggest mistake we're committing" in the criminal justice system today. "The worst thing we can do is try a juvenile as an adult and then put him or her on probation," says Shorstein. "It reinforces the failures of the existing criminal justice juvenile system, which has never given good judges the means with which to punish serious juvenile behavior." Based on his extensive experience in the state criminal justice system, Mr. Shorstein concludes that meaningful punishment for early offenders, including incarceration where appropriate during a person's "most prolific and violent period" will "probably prevent more crime than . . . the lifetime incarceration of a 25-year-old."

As reported recently in newspapers across the state, last year alone Florida poured $512 million into youth "programs that provide counseling, education and lessons on behavior," with "little to show for it." No social program can undo the devastating effect of a youthful criminal's exposure to a juvenile justice system which allows repeated criminal conduct to go unpunished. As the studies cited by Eugene Methvin confirm, the state's failure to take punitive action in dealing with first time youthful offenders is a primary factor contributing to the development of habitual criminals.

Florida's system is currently incapable of providing this crucial deterrent. This failure is made more ominous by the recognition that in the next 15 years, the state's teen population is expected to grow by 42 percent. As Jack Levine, Director of the Florida Center for Children and Youth recently put it; "Florida is poised for disaster." Unfortunately, shortsighted leadership and a mentality of indulgence helped to put us in this desperate situation.

D. Recommendations for Improving the Situation.

1. Long Term.

Given the disparity between the number of violent crimes committed by juveniles and the number of facilities available to detain them over the last decade in Florida, juvenile offenders have been taught to believe through repeated brushes with the system that unless they commit murder, they stand little or no chance of being incarcerated for their crimes. It seems obvious that until juvenile offenders who commit violent crimes understand that they will be punished for their crimes, there will continue to be no meaningful deterrent to juvenile crime in Florida and elsewhere

in our nation. Putting violent and chronic juvenile offenders into an adult system which itself does not deal effectively with violent crime is no meaningful solution. This sentiment is echoed by officials with the Florida Department of Juvenile Justice who believe our state would greater benefit from enhanced juvenile justice programs outside the adult system, as long as our judges remain reluctant to impose meaningful punishment through the adult system on juvenile offenders.

The long-term solution to the problem of juvenile crime clearly falls largely outside the law enforcement system. It requires strengthening of the basic institutions of family, schools, religious organizations and community groups which are responsible for instilling values and helping to raise law-abiding citizens. From a law enforcement perspective, however, there can be no meaningful deterrent to ongoing juvenile crime as long as juvenile offenders believe they will never be subjected to meaningful punishment for their crimes.

2. Build More Youth Detention Facilities.

Accordingly, we must commit to the building of a sufficient number of youth detention facilities to provide an adequate deterrent to those who would commit crime.

3. To Protect the Innocent, Violent Juvenile Offenders Must be Punished and Removed from Society.

We must insure that violent and hardened juvenile offenders, who are responsible for a large share of the violent crime increase in Florida and our nation, are removed from society and punished. Increasingly, these violent criminals are being transferred to the adult system which seems incapable of imposing adequate punishment, and which fails to incarcerate 85 percent of the juveniles certified for adult treatment.

4. We Must Provide Police and Sentencing Courts with Full Access to Juvenile Records

Law enforcement officials are repeatedly hampered in their efforts to deal with juvenile criminals by a state justice system which prevents knowledge of prior youth offenses from being utilized in court proceedings and even from appearing on police criminal history checks. As illustrated in the case histories discussed above, evidence of the crimes of chronic juvenile offenders may not be considered under certain evidentiary rules in adult proceedings. As a result, seemingly "first-time offenders" in the adult system are often those with a history of violent and serious juvenile crimes. Both our law enforcement in the street and our decision makers in court must be armed with the complete story on the background of the individual in question.

5. We Must Recognize that Juvenile Crime Is Never "Small."

Punishing juveniles for engaging in "quality of life" offenses such as under-age drinking, urinating in the street, jumping turnstiles at public transit facilities and painting graffiti on public and private property renders significant results toward eliminating more serious crimes. During 1994, Mayor Rudolph Giuliani and his appointed Police Commissioner, William Bratton, instituted a program to eliminate the quality-of-life offenses which pervaded the streets and subways of New York. Giuliani and Bratton placed both uniformed and undercover officers throughout the City's subway system and other key juvenile crime areas arresting fare evaders, graffiti vandals and other "quality of life" offenders. When violators were arrested or detained for these type offenses, they were often found in possession of stolen weapons or other items. Moreover, during questioning they provided information about other offenses and perpetrators, resulting in arrests of violent and habitual criminals.

According to Jeffrey Fagan, Director of Columbia University's Center For Violent Research and Prevention, Mayor Giuliani's and Commissioner Bratton's efforts put in motion a crime fighting strategy which has yielded phenomenal results. For example, New York City's murders declined by 49%, robberies by 43% and burglaries by 39%. In 1995, the City accounted for 70% of the national decline in serious crimes. Juvenile "quality of life" offenders were sent a message that their lawlessness would no longer be ignored, but rather result in certain and swift punishment.

F. Conclusion.

Whatever else can be said about the juvenile crime issue, it is clear that with Florida's current juvenile crime levels and with a dramatic increase in juvenile population anticipated during the next 15 years, we have no choice but to take strong and immediate steps to address the issue. A weak and indulgent response to juvenile crime serves an injustice to both the society which suffers from the effects of such crime and to the juvenile offender who is encouraged through repeated conduct

which goes unpunished to escalate his criminal activity. To fail to act responsibly to address this crucial problem is to disserve both the law-abiding public and our state's youthful offenders.

Mr. MCCOLLUM. Thank you very much for those enlightening comments, Mr. Sukhia.

Mr. Kester, you are recognized. Please present what you wish to us.

STATEMENT OF JIM KESTER, CRIMINAL JUSTICE DIVISION, OFFICE OF THE GOVERNOR OF THE STATE OF TEXAS

Mr. KESTER. Mr. Chairman, I am from the——

Mr. MCCOLLUM. We need your microphone, if Mr. Sukhia would be so kind as to share.

Mr. KESTER. I am not accustomed to doing this.

We are the Criminal Justice Division of the Governor's Office, and in Texas the Governor's Office administers the juvenile accountability incentive block grant.

I have three brief comments about that program. First, we like block grants. We appreciate the fact that Congress has made the program flexible for the States to participate in and has left the States in charge of assessing their own needs, and the local governments can decide where funds can best be used most effectively.

We have been awarded $14 million under the block grant. We have awarded out, sub-granted about 80 percent of that money, and we are moving quickly to award the remaining 20 percent.

Second, we support graduated sanctions for juvenile offenders. Our governor and our legislature have rebuilt the State's juvenile justice laws around seven levels of sanctions. Sanctions begin at the first level with the first minor offense, with the kid being held accountable for his actions, but also being helped to get the supervision and services needed to stay out of trouble in the future.

Sanctions end at level seven with aggressive prosecution in both juvenile courts and criminal courts.

Third, we support the use of Federal funds as an incentive to the States to adopt graduated sanctions. In offering that incentive, we would urge you to allow flexibility in the States' ways of complying, and there are some compelling reasons for that.

Funding is one. Our State has put substantial funding behind our new system of graduated sanctions, but even with that State aid, there is often a shortfall in what it takes to fully implement those sanctions at the local level, or the sanctions at a particular level do not fit in certain cases. That is why our State law makes the sanctions discretionary and not mandatory, and we would urge the same with respect to tying graduated sanctions to eligibility for Federal funds.

There are a couple of approaches that are worth looking at as to how to allow more flexibility for States. One is a substantial compliance provision, and that would be one way to do it. Another is to allow States to participate so long as they are making progress toward full compliance.

Both approaches would encourage States to participate and to help them move in the direction of full compliance.

And, finally, we believe in prevention, too, as we know you all do. About half of the Federal funds we receive are used for preven-

tion. The other half we use for intervention. The result is a balanced approach that works very well for us.

That concludes my remarks, Mr. Chairman, and thanks for the opportunity to come up here and talk with all of you.

[The prepared statement of Mr. Kester follows:]

PREPARED STATEMENT OF JIM KESTER, CRIMINAL JUSTICE DIVISION, OFFICE OF THE GOVERNOR OF THE STATE OF TEXAS

My name is Jim Kester. I represent the Criminal Justice Division of the Governor's Office in Austin, Texas. We are a funding agency, handling about $130 million a year in state and federal funds that are awarded to some 1,200 cities, counties, school districts, private not-for-profit organizations, faith-based organizations, and state agencies.

One of the federal programs that we administer is the Juvenile Accountability Incentive Block Grant. I have three brief comments about that program, which I respectfully offer for your consideration.

First, we like block grants. We appreciate the fact that Congress has structured the Juvenile Accountability Incentive Block Grant in such a way that state and local governments are in control of assessing their needs and deciding where federal funds may be used most effectively. And we appreciate the fact Congress has made participation in the program flexible and would urge you to keep it that way. We are making good use of the $14.3 million awarded to Texas. Almost 80% of the funds are committed, and we are moving quickly to award the remaining 20%. Attached to my written testimony you will find a summary of how much money is being used for each of the purpose areas allowed under federal guidelines. Examples of local projects are also attached.

Second, we support graduated sanctions for juvenile offenders. Our Governor and our Legislature have rebuilt the state's Juvenile Justice Code around seven levels of sanctions. Intervention begins at the first minor offense, holding kids accountable for their actions but also helping them get the supervision and services they need to stay out of trouble in the future. Intervention ends at the seventh level, with aggressive prosecution of violent offenders in both juvenile courts and criminal courts.

Third, we support the use of federal funds as an incentive to states that adopt graduated sanctions. In offering that incentive, we would urge you to allow flexibility in how states comply. One compelling reason for flexibility is constraints on state and local budgets. For example, Texas law provides for state aid to local juvenile courts and probation departments that follow state guidelines. But even with state aid many communities cannot provide all of the supervision and services required by state guidelines. Resources may not be available. Or the sanctions called for in state guidelines may not fit the circumstances in particular cases. My colleague from the Texas Juvenile Probation Commission will attempt to quantify much of this for you, but these are examples of reasons why state law makes graduated sanctions discretionary, not mandatory.

In view of situations like the ones just described, we would ask that you consider alternative ways for states to qualify for funds. One approach might be a "substantial compliance" provision similar to the one that Congress has allowed under the Juvenile Justice and Delinquency Prevention Act. Another alternative would be allowing states to participate in funding so long as they are making progress toward full compliance. Both approaches would encourage states to participate and would help them move toward full implementation of accountability-based sanctions.

Mr. Chairman, that concludes my comments. Mr. Wesley Shackelford is also here from the Texas Juvenile Probation Commission. He will provide estimates concerning the total cost of implementing graduated sanctions in our state. Also, he will provide some specific examples of why juvenile courts have deviated from state guidelines in applying particular sanctions in particular cases.

ATTACHMENT 1
JUVENILE ACCOUNTABILITY INCENTIVE BLOCK GRANT
DISTRIBUTION OF FUNDS SUMMARY

The State of Texas was awarded $14.3 million under the JAIBG program. Of this amount 75% or $10.7 million was made available to 264 local units of government and 24 Regional Councils of Governments within the State. To date, a total of 131 local jurisdictions have been awarded JAIBG funds in the amount of $9,308,069. This represents 87% of the pass-through funds awarded to the State. The remaining 13% of pass-through funds will be awarded in the coming weeks. In addition, 79 local units of government including 68 cities, 9 counties and 2 regional councils of

governments have waived their funds to neighboring jurisdictions or entered into regional coalitions. This represents 22% or $2.4 million of the pass-through funds.

Based on federal guidelines, states applying for funding to OJJDP and units of local government receiving funds from states must provide assurance that, other than funds set aside for administration, not less than 45 percent is allocated for program purpose areas 3–9, and not less than 35 percent is allocated for program purpose areas 1,2 and 10.

In accordance with this rule the State of Texas has required that all units of local government certify their compliance with this requirement unless due to the interest of public safety and juvenile crime control it would be better to spend the funds in another manner. The following is a breakdown of the percentage of funds to be used in each purpose area by the units of local government who have been awarded JAIBG funds:

Purpose Area 1	6.38%	$591,147
Purpose Area 2	17.30%	$1,610,666
Purpose Area 3	3.36%	$312,541
Purpose Area 4	4.29%	$398,980
Purpose Area 5	.83%	$77,561
Purpose Area 6	5.25%	$488,394
Purpose Area 7	31.44%	$2,926,594
Purpose Area 8	.08%	$7,662
Purpose Area 9	.57%	$52,989
Purpose Area 10	20.50%	$1,908,589
Purpose Area 11	7.59%	$706,827
Purpose Area 12	2.09%	$194,810
Administrative	.30%	$28,309
Total		*$9,308,069*

Although several individual units of local government chose not to follow the required breakdown of funds between purpose areas due to the interest of public safety and juvenile crime control, the following breakdown shows that for the $10.7 million that was allocated to the locals, the State of Texas as a whole is in compliance with the required distribution between purpose areas:

Purpose Areas	3–9 45.82%
Purpose Areas 1, 2, or 10	44.18%
Other (purpose areas 11, 12, & admin)	10.00%

ATTACHMENT 2
JUVENILE ACCOUNTABILITY INCENTIVE BLOCK GRANT
PROJECT SUMMARIES

The following is a brief summary of three projects funded in the State of Texas under the JAIBG program. To give you a broad sampling of how these funds are being used in Texas we have included projects from three separate regions of the State and included one City, one County and one Regional Council of Governments.

Dallas County

Award

- Dallas County was allocated $396,264 under the JAIBG program. In order to make a greater impact, fifteen of the eighteen cities within Dallas County waived their allocation to the county making the total award $1,242,748. In addition, Dallas County will provide the required cash match of $138,083 making their total project budget $1,380,831.

Purpose Areas (the 35%/45% requirement was waived in this case.)

- 15% of funding will address Purpose Area #6: provision for technology, equipment, and training programs for prosecutors.
- 85% of funding will address Purpose Area #10: establishing and maintaining information sharing systems.

Project Summary

- Dallas County in conjunction with fifteen cities will utilize the JAIBG funds to develop and implement an integrated data system that will link law enforcement, prosecutors, courts, probation, Child Protective Services, schools, and social service providers. The data system will consist of a comprehensive tracking system for children, so that agencies, professionals and the courts serving those children can access and share critical information as soon as the children come into the sys-

tem. The Judicial Committee on Information Sharing (JCIT) is in the process of establishing a similar system linking Municipal and Justice of the Peace Courts. Dallas County will collaborate with JCIT to aid in the development of the data system.

City of Houston

Award

- The City of Houston was awarded $714,675 under the JAIBG program. In addition, the city will provide a cash match of $79,408 making their total project budget $794,083.

Purpose Areas

- 34% of funding will address Purpose Area #2: accountability based sanctions programs.
- 56% of funding will address Purpose Area #7: enabling courts to hold juvenile offenders accountable/reduce recidivism.
- 10% of funding will address Purpose Area #10: information sharing systems.

Project Summary

- Although Texas law includes Class C misdemeanors and status offenses (non-jailable offenses) within the progressive sanction system described by the Juvenile Justice Code, the City of Houston Municipal Courts do not refer offenders to the Harris County Juvenile Probation Department for social services because such services are underfunded, and those which are funded are triggered by higher sanction levels within the system. This means that juveniles must commit serious jailable offenses to be eligible for helpful intervention services. Further, there is no equivalent of the juvenile probation officers within Municipal Courts, making supervision of community service and other alternative sanctions difficult because of the lack of resources needed for supervision and enforcement. This program will institute uniform sentencing guidelines through progressive sanctions for juvenile offenders and their parents/guardians, and personnel will be hired to supervise juvenile offenders completing community service hours. Juveniles who fail to complete their required community service or social service program attendance will be fined, increasing the compliance rates within the Municipal Courts. The program will also provide funding for youth offenders and their parents to receive social services such as gang intervention/treatment, drug/alcohol treatment, teen pregnancy services and parent skill building. In addition, improved coordination between justice agencies will be implemented so that judges will have greater access to criminal history information. Finally, notice of the new progressive sanctions model will be included with the summons issued to parents/guardians of juvenile offenders, and the media will be utilized to promote the program to inform youth about the increased accountability they will face for committing non-jailable offenses in Houston.

West Central Texas Council of Governments

Award

- Of the $10.7 million passed through to local units of governments, a total of $959,478 was retained by the state from cities and counties who were not eligible for award because their allocation was less than $5,000. The State of Texas allocated these funds to the 24 Councils of Governments across the State. The West Central Texas Council of Governments was allocated $30,118 with a cash match of $3,347 making their total project budget $33,465.

Purpose Areas (the 35%/45% requirement was waived in this case)

- 100% of funding will go toward Purpose Area #11: accountability-based programs for law enforcement referrals or those that are designed to protect students and school personnel from drug, gang, and youth violence.

Project Summary

- The West Central Texas Council of Governments will utilize the funds to develop and implement an accountability-based training program for law enforcement officials and school personnel. The training programs will provide training and education in the areas of current juvenile issues, legal aspects of juvenile crime, conflict resolution skills and issues surrounding drug, gang and youth violence.

Mr. MCCOLLUM. Well, thank you very much for coming, Mr. Kester. You are very important to this hearing because you have that hands-on experience with our program.

Mr. Shackelford, you are recognized.

STATEMENT OF WESLEY SHACKELFORD, ESQ., TEXAS JUVENILE PROBATION COMMISSION, AUSTIN, TX

Mr. SHACKELFORD. Thank you, Mr. Chairman and members of the committee.

It is an honor to be here and appear before you. I am at the Texas Juvenile Probation Commission, and building on what Mr. Kester has testified to, I am going to give you just a brief overview of what the graduated sanctions system looks like in Texas.

It was initiated by the legislature in 1995 and became effective in 1996. So we are now into the fourth year of the program.

It is a seven level system, and I decided to give you all a visual aid that we provided to juvenile court judges across the State. It is a laminated sheet, to juvenile probation officers, and every juvenile prosecutor's office in the State. We have conducted a vast amount of training of all of these juvenile justice practitioners, and this is what we leave them with as a bench tool to look at the sanctions and how they would apply in each juvenile's case.

The levels start at level one with an informal disposition by juvenile court intake and referral to needed social services, and we have a significant amount of prevention and early intervention programs not operated by the probation system, and the main one is called services for at risk youth, and this would be intensive family counseling, parenting skills. Often in these very minor, first time offenders there is an issue at the family level.

Level two would be an informal probation. It is not before a court typically. However, it is a supervised case load. It looks very much like court order probation for 6 months.

Level three is formal, court ordered probation for 6 to 12 months.

Level four is intensive supervision probation, and the language of the statute is an intensive and regimented program, and it would include anything that is short of residential placement followed by regular probation.

And level five, the sanction is confinement in a secure correctional facility for six to 12 months followed by probation in the home, and often those are boot camp type programs.

At level six there is commitment to the Texas Youth Commission, and that is the State institutional division.

And level seven, the most serious consequence, the courts have a choice of either transferring the child to criminal court for prosecution as an adult or a fixed term of confinement at the Texas Youth Commission with a possible transfer to the State prison system, and that can be from one to 10 years recommended by the guidelines. They can actually receive up to 40 years under law.

So that is the quick overview of what the system looks like, and there are a few key assumptions. The offenses here are basically for a first time offender. If you came through the door for one of the offenses in the left column, this is the sanction. So you do not start at level one just because you are a first time offender. Level one is reserved basically for status offenders, truants and runaways and fine only offenses that get transferred to the juvenile court.

And the key assumptions are that there should be a consequence for every criminal action. We have accountability in Texas, and prior to the implementation of the guidelines many times, as we have heard earlier, a minor first time offender might not even be seen by anyone at the juvenile court. They may only have gotten a referral from the law enforcement agency and never even brought the child in.

Second is that the sanctions become progressively more severe. In Texas, we call the system progressive sanctions.

And the third is that you never go back. One you reach a level of accountability on the progressive sanction system, you never go to a lower level, and that means even if you come through or are put on an intensive probation case load, compete that probation successfully, go home and commit another offense, a very minor offense. You are coming back at at least level four or higher. So lesser sanctions send the wrong message is the view in Texas.

But the system is discretionary in each individual's case, and this provides flexibility to the juvenile court judges to assess the needs of that particular child, and in many cases they deviate or do not follow the guidelines to a more severe sanction. There may be other information besides just the offense for which they are referred to court. They could lead them to do a more intensive supervision, and conversely if you have a child who may have committed a relatively serious offense but has a very strong family or support system, the judge may decide to deviate down in the guidelines.

Although the guidelines are discretionary, the courts are required to report when they do not follow the guidelines. They do not have to seek permission, but they are supposed to report the reason that they did not follow the guidelines in any given case, and this is so that juvenile justice administrators and the legislature can see where the needs of the system are in terms of human and financial resources, in terms of facilities, and any needed law changes.

There is a State agency called the Criminal Justice Policy Council that does research on the juvenile justice and criminal justice system, and they are monitoring the implementation of the guidelines, and what they have found is that since the guidelines came into effect in 1997, 45 percent of cases were disposed within the guidelines, whereas before they were implemented, only about 31 percent of the cases would have met the guidelines' dispositions.

And the overarching thing that they did find is that dispositions or sanctions in the system have become more severe. Overall the accountability level has been raised since the implementation of progressive sanctions.

Every juvenile board in the State has adopted progressive sanctions. Texas has a county operated juvenile justice system governed by a panel of judges typically in each State, and all of those boards have adopted the guidelines.

The legislature has been looking at ways to improve compliance with the guidelines, and instead of mandating their being followed in each case, currently the legislature is in session, and they are considering making new funding available for secure placement, which in our system is level five, only for children who are at level

five of the progressive sanction system, and through that they are able to encourage the judges to follow the guidelines.

Since the implementation of the guidelines, the State has dramatically increased its financial commitment to juvenile justice. In 1994, the State and local governments provided $252 million to the juvenile justice system, whereas in 1998, it had grown nearly 72 percent to $433 million.

Of that, about 277 million is State funding, and 156 million is local county funding, and this is the amount that is expended after a child is referred to juvenile court. It does not include law enforcement, but once they reach the juvenile court system, that is the amount that is being spent.

Through this dramatic funding and influx of funds, the State has moved much closer to being able to fully implement progressive sanctions. That was one of the big concerns when progressive sanctions were created, was the large cost to fully implement the system.

Best estimates now are that we are only about $34 million a year short of being able to fully implement them. That is needed for some additional funds for secure placement of children, additional probation officers to reduce high case loads. So we are very close to that point.

And just a quick note on the referrals to juvenile court. They peaked in 1995 just before progressive sanctions became effective at 134,000. Last year they were down to 126,000, and the good news at least in Texas is the numbers have dropped much more significantly the more serious an offense that we are counting, so that violent offenses have dropped much more substantially than that number would indicate.

Finally, the graduated sanction system put in place will hold juveniles more accountable at every point of the system. It permits State leaders to see what the juvenile system should do and target funds to particular points in the system, and lastly, it provides a road map of best practices and dispositions for juvenile court judges, while maintaining the historic flexibility that exists in the juvenile justice system.

Thank you very much, and that concludes my remarks.

[The prepared statement of Mr. Shackelford follows:]

PREPARED STATEMENT OF WESLEY SHACKELFORD, ESQ., TEXAS JUVENILE PROBATION COMMISSION, AUSTIN, TX

My name is Wesley Shackelford. I hold the position of Senior Staff Attorney/Intergovernmental Relations at the Texas Juvenile Probation Commission. In 1995 the Texas Legislature implemented a broad range of measures to reform the juvenile justice system. One of the key components was the addition of statutory guidelines for making dispositional decisions and for formulating appropriate sanctions based on offense severity and past delinquent behavior and dispositions. This graduated sanctions system in Texas is called "progressive sanctions." The guidelines describe seven sanctions levels, each one more restrictive and demanding than the previous one. The system begins with an informal, pre-court disposition called "supervisory caution" at level one that involves the juvenile and family meeting with a probation officer for counseling about the offense, consequences of future behavior, and referral to needed social services. The sanctions progress all the way up to level seven, which requires certification to criminal court or a fixed term of commitment to the Texas Youth Commission, the state institutional system. The guidelines reflect generally how most juvenile justice system practitioners believe the system should work when resources are adequate to meet the needs. The key assumptions of the guidelines are:

I. *A Consequence for Every Criminal Action.* Progressive Sanctions is based on numerous theories and philosophies. Most prominent, however, is the concept of a consequence or response being brought to bear on a juvenile offender each and every time the juvenile commits an offense beginning with the very first offense. For every offense for which there is probable cause, Progressive Sanctions recommends a particular set of consequences and responses ranging from needed social services to secure correctional placements.

II. *Progressively More Severe Sanctions.* As the level of criminal behavior by the juvenile escalates, the level and intensity of the response by the juvenile justice system increases.

III. *Never Go Back.* The Progressive Sanctions Model builds in the concept that once a juvenile is placed on a particular level of intervention, the juvenile will receive at least that same level of intervention, if not higher, the next time the juvenile commits a criminal offense. This reinforces the concept of progressively more severe responses to chronic criminal behavior or progressively more severe offenses.

The progressive sanctions system also preserves flexibility to fashion sanctions and services uniquely suited to the needs of the individual by making the application of the guidelines discretionary in each juvenile's case. While adhering to the Progressive Sanction Guidelines is discretionary, reporting the reason the guidelines were not followed in a particular case is not. The fundamental reason for this is because juvenile justice system planners need information from practitioners on why certain dispositions are given or not given. The reporting of Progressive Sanctions disposition data allows the Texas Legislature and juvenile justice system analysts to plan for the future of the juvenile justice system in terms of vital financial and human resources, needed law changes, state and local correctional and treatment facilities and much more.

Every juvenile board in the state has adopted the progressive sanctions system. Juvenile boards are the governing boards of juvenile probation departments and are typically comprised of judges who hear juvenile cases. This means that they will make a good faith effort to implement the guidelines in their jurisdiction with allowance for a lack of sufficient resources to meet the guidelines. Studies on the implementation of progressive sanctions by the Criminal Justice Policy Council (CJPC) show that dispositions in juvenile cases are trending towards more compliance with the guidelines. In 1997, CJPC analysis shows that 45 percent of cases were disposed of within the guidelines. In comparison, only 31 percent of cases disposed of in 1995 would have met the guidelines had the guidelines been in effect at that time. The primary reason given for not following the guidelines in particular cases has been that a less severe sanction was given because the juvenile had no prior offenses. The main reason for giving a more restrictive sanction than recommended by the guidelines is that it was necessary because of the juvenile's treatment needs. These types of reasons indicate judges do not follow the guidelines when the needs of the juvenile do not fit neatly into the recommended progressive sanctions level.

The legislature is exploring ways to improve compliance with the guidelines. Rather than penalize juvenile courts for not strictly following the guidelines, the legislature is considering making new state money available for secure residential placement only for those juveniles who meet the offense and criminal history requirements of progressive sanctions level 5 (see Attachment). This way the state could assure that the youth placed at that level are in compliance with the state's progressive sanctions policy.

The greatest concern expressed regarding enactment of the guidelines was that the cost of full implementation would be extremely high and difficult to project with any certainty. Although it could not be fully funded, the legislature did appropriate a large amount of money to fund the progressive sanctions guidelines with the expectation of good faith implementation. In 1997, the legislature went further by requiring each juvenile board in the state to adopt the progressive sanctions guidelines for their jurisdiction in order to be eligible to receive new funds. Some of these funds were specifically targeted at levels one, two and three to provide more intervention at the early levels of the juvenile justice system.

Since the implementation of progressive sanctions, the state and local governments have dramatically increased their financial commitment to the juvenile justice system. Before progressive sanctions in 1994, the total amount spent on the juvenile justice system was $252.4 million, including $21.5 million for the construction of new facilities. In 1998 that total had grown nearly 72 percent to $432.9 million. Of that total, $277.2 million is state funding and $155.7 is local funding. This represents the amount spent on processing and sanctioning juveniles after they were

referred to juvenile court. This large influx of money into juvenile justice has moved the state closer to being able to fully implement the progressive sanctions system. The estimate of the additional money that would be required to fully implement the guidelines is $34 million per year. This is needed to fully fund residential placement, additional probation officers, and additional programs. The total number of referrals to juvenile courts in Texas in 1997 was 126,132. Referrals to juvenile courts peaked in 1995 at 133,866 just before the implementation of progressive sanctions.

Overall the system of graduated sanctions put in place in Texas has led to more accountability for juvenile offenders at all points in the system. It permits state leaders to easily see what the juvenile justice system should do and to target funds at particular points in the system. Lastly, it provides a roadmap of best practices in dispositions to juvenile court judges while maintaining the historic flexibility that exists in juvenile justice.

ATTACHMENT
Texas Progressive Sanctions Guidelines

Offense		Recommended Sanctions
Conduct indicating a Need For Supervision, other than conduct described in 51.03(b)(6) or a Class A or Class B Misdemeanor.	1	Require counseling; Inform child of progressive sanctions for future offenses; Inform parent(s) of responsibility to impose restrictions on child; Provide information to child & family on needed social services; Require child or parent(s) to participate in services from STAR (if program is available); Refer child to citizen intervention program; Release child to parent(s) or guardian(s).
Conduct indicating a Need For Supervision under 51.03(b)(6) Class A or B Misdemeanor, other than a misdemeanor involving the use or possession of a firearm. Delinquent Conduct under Section 51.03(a)(2) or (3)	2	Deferred Prosecution or Court ordered probation for 3-6 months; Inform child of progressive sanctions for future offenses; Inform parent(s) of responsibility to impose restrictions on child; Require restitution to victim or community service restitution (CSR); Require parent(s) or guardian(s) to identify restrictions to be imposed on child; Provide information to child & family on needed social services; Require child or parent(s) to participate in services from STAR (if program is available); Refer child to citizen intervention program; Additional conditions of probation as appropriate.
Misdemeanor involving use or possession of a firearm State Jail Felony Third Degree Felony	3	Court ordered probation for 6-12 months; Require restitution to victim or community service restitution (CSR); Impose specific restrictions and requirements for child's behavior; Require probation officer to closely monitor child's activities and behavior; Require child or parent(s) to participate in programs or services as appropriate; Additional conditions of probation as appropriate.
Second Degree Felony	4	3-12 months intensive and regimented program PLUS Court ordered probation for 6-12 months; Require restitution to victim or community service restitution (CSR); Impose highly structured restrictions and requirements on child's behavior; Require probation officer to closely monitor child; Require child or parent(s) to participate in programs or services, as appropriate; Additional sanctions, if appropriate.
First Degree Felony, other than a felony involving the use of a deadly weapon or causing serious bodily injury.	5	6-12 months court ordered placement in a post-adjudication secure correctional facility PLUS Court ordered probation for 6-12 months; Require restitution to victim or community service restitution (CSR); Impose highly structured restrictions and requirements on child's behavior; Require probation officer to closely monitor child; Require child or parent(s) to participate in programs or services as appropriate; Additional sanctions, if appropriate;
First Degree Felony involving the use of a deadly weapon or causing serious bodily injury, an Aggravated Controlled Substance Felony, or a Capital Felony	6	Commitment to Texas Youth Commission where Commission may impose the following: 9-24 months highly structured residential program; Require restitution to victim or community service restitution (CSR); Require child or parent(s) to participate in programs or services as appropriate; Additional sanctions, if appropriate; Parole with highly structured restrictions and requirements on child; Parole supervision for not less than 6 months; Other parole supervision conditions, as appropriate.
First Degree Felony involving the use of a deadly weapon or causing serious bodily injury, an Aggravated Controlled Substance Felony, or a Capital Felony	7	Discretionary Certification and Transfer to Criminal Court or Determinate Sentence to the Texas Youth Commission where Commission may impose the following: 12 months to 10 years highly structured residential program; Require restitution to victim or community service restitution (CSR); Require child or parent(s) to participate in programs or services as appropriate; Additional sanctions, if appropriate; Parole with highly structured restrictions and requirements on child; Parole supervision for not less than 12 months; Other parole supervision conditions, as appropriate.

Mr. MCCOLLUM. Thank you, Mr. Shackelford. That was very enlightening, and we appreciate it.

Judge Taylor, you are recognized.

STATEMENT OF RICHARD D. TAYLOR, JR., JUDGE, JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT, RICHMOND, VA

Mr. TAYLOR. Good afternoon. I feel very privileged to be here and to address you all, and not because I am a judge and have the opportunity to testify before Congress and have people take down my words, but it occurred to me when I listened to the opening statements from Chairman McCollum and from Congressman Scott that I was very much the beneficiary of many of the social programs you all had spoken about.

And so, I am here not only as a judge, but I am here as a person whose family members have participated in and benefitted from the Head Start Program, from mentoring programs and from after school programs.

I did not start off in Richmond. I started off in Norfolk, Virginia, and Buffalo, New York (we were a bit schizoid with the weather part of that), but in Norfolk I started off in the Liberty Park housing projects; in Buffalo, in the East End, the Talbert Mall Projects. We lived in subsidized housing.

The benefits, I think, of those programs should be obvious to all of you, and so, this occasion gives me an opportunity to say to all of you "thank you" for those programs. If not for the existence of those programs, I could not tell you that I would be sitting here as a judge testifying before the Crime Subcommittee of the Judiciary Committee. And so, again, I thank you.

I want to start off by saying that I agree wholeheartedly with much of what has been said here with regards to protecting the public. I do not have any colleagues, and I do not know of any judges in Virginia who do not believe that protecting our citizens is a paramount concern.

I do not know any judges in Virginia who do not believe that early intervention is critical, and I also share the assessments of many of the programs that you have across the country, including Utah and Texas, that state that all services, including probation, should be meaningful.

And I think at some point guidance perhaps would be helpful with regards to sentencing options.

I want to share, however, with you some of my personal experiences as a judge, and they divert just a little bit from my esteemed colleague from Virginia Beach. When I got on the bench, I understood that the public would watch what I did; and I understood, too, not only from my friends and family, but because of my own understanding of the importance of protecting the community, the importance of not having young people coming before me with papers 13, 26 and 50; I thought that that was absolutely outrageous, and I was not going to have it.

And so, I did much of what people talked about here: strict accountability at every stage with every offense, and I locked kids up. I locked them up in the detention home. I locked them up by committing them to the State, and after some number of years, I noticed that a number of these young people started coming back.

Now, one thing I think is absolutely critical to say, and especially because I am telling you I started in public housing projects, is that we should not paint with too broad a brush. Perhaps, and I do not have the same type of statistics that the U.S. attorney has, but my assessment would be from statistics. That I have seen that the at risk community is this large, and the number of people who are raising a lot of heck may be about this large, and it is those individuals that we are talking about.

They kept coming back and coming back, and I could not understand it; I thought that perhaps I did something wrong, and quite frankly, when they came back on arraignment, I was embarrassed to say that those young people had appeared before me for prior offenses. So I had their files pulled, and when I looked at the files, I discovered what I have just told you now, that the young people had been incarcerated. Some of them had been committed three and four times with my get tough policies.

In Richmond at that time, we had probation, and our judges were putting people on probation, and we had commitment. We had nothing in between. We would commit young people. They would be warehoused, and sometimes they needed to be because they were menaces to society, but they would come back out eventually, and they came out without services.

But if we did not commit these young people, we sent a horrible message, and Judge West talked about this earlier, that they were not being held accountable. So one of the things that we did in Richmond, through the leadership of our city manager was to create something we call a "continuum of services."

Now, we call it a continuum of services, not graduated sanctions or progressive sanctions, but it operates very similarly in terms of what you are talking about with progressively more severe or restrictive sanctions.

We go anywhere from strong, intensive day treatment programs where our young people are monitored for going to school, not only for going to school, but for participation in school, for curfew and things like that, right on up to a boot camp.

One of the primary differences, however, between what we have and what I have seen so far is that the judges have absolutely unfettered discretion to assign youth to these programs if they meet the criteria. If there is an undercurrent that I feel from much of what I have read and what I have seen, it is the belief that if Congress does not create a system of guidelines for progressive or graduated sanctions, judges are not going to do the right thing. You just cannot trust a juvenile judge, and sometimes circuit court judges, to do the right thing.

I beg to differ. I think, again, we are painting with too broad a brush, and that if you look at the facts, you will see something different. In the City of Richmond, we did not have the type of sanctions and services that would allow us to do things other than place a person on probation or commit them.

Once we got those services we utilized them, so much so that it is not uncommon for us to receive memos from the local Director of the Department of Juvenile Justice Services saying, "You are going to have to hold off on some of what you are doing in terms of your referrals because we are overbooked."

Our boot camp at times is overbooked, and outreach detention programs are often overbooked, and so we have judges that are utilizing these programs and we are utilizing these programs without the Federal Government telling us that if a young person does this, then what you should do is this; if they do X, then you need to do Y, and if they do Z, you need to do something else.

I think that if the States and localities are given the opportunity to have these type of sanctions and to enjoy the discretion to use it as is best for their locality, that you will see it used.

But also, there is one additional point. We coupled our sanctions with services. The reason why my young people kept coming back, despite the fact that I was tough, is because we did not have services. A great number of individuals in our population, and it has not been spoken of before, have severe mental health issues. They are ADD. They are emotionally disturbed.

You take a young person who lives below the poverty level, whose parents never graduated from high school, one or two of the parties have been incarcerated, there is gunfire on their streets, drug use all over the place, and they have a mental condition, and then you drag them before me and say, "Oh, you have got Judge Taylor. He's a tough judge, and now I want you to go away, attend school, do not disobey your parents, stay in school all day, study." It just did not work. We had to combine services.

What we found was that when we united those sanctions with the Department of Social Services and we looked at the entire family, we started to do some really wonderful things. It is not unusual to have a family come back to court and see one person in the family that you had to write off; they are 18 now—we had no services yet we are able to take care of the rest of the family with services and sanctions so that they do not reoffend and so that you do not see them again. This serves us well for a number of obvious reasons.

I am going to conclude by saying that we get to look at individuals with this type of system as individuals. As I stated in my written testimony, this is not like the sci-fi series on television, I think it is "Voyager" with the Borg. Our children are not Borg. They are not a collective. They do not all think the same. They do not all act the same, and I think it is absolutely critical for judges to be able to treat children as individuals, to fashion the appropriate sanctions and services for them as individuals, and I trust that we can do so without the judges having to be guided and told what they have to do at every step.

And, again, thank you so much for being given this opportunity.

[The prepared statement of Judge Taylor follows:

PREPARED STATEMENT OF RICHARD D. TAYLOR, JR., JUDGE, JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT, RICHMOND, VA

I am Richard D. Taylor, Jr., and I am a Juvenile and Domestic Relations District Court judge in the City of Richmond, Virginia. I have served in this capacity for nearly six years. In February of 1999, the General Assembly of Virginia reelected me to a second six-year term. Prior to my service as a judge, I served as a Special Assistant for Policy and Deputy Counsel to former Virginia Governor L. Douglas Wilder. Before serving with Governor Wilder, I was an associate attorney in the law firm of Hill, Tucker & Marsh.

I appear today to share my perspective, the perspective of a juvenile court judge, with regards to "graduated" or "progressive" juvenile court sanctions.

BRIEF DISCUSSION

My research of various systems of graduated/progressive juvenile sanctions resulted in my discovering much of which I wholeheartedly agree. Protecting our citizens must be a paramount concern of judges. Early intervention is critical. All services, including probation, should be meaningful. Guidance with regards to sentencing options for various infractions is very useful, especially when supported with appropriate resources.

At the same time, I found much that gave me pause for great concern. Although many of the "progressive" or "graduated" systems appear to match common sense—and commonly used—sanctions to offenses, and offer judges some opportunity to deviate, the bottom line is always the same: judges are strongly expected to follow the guidelines—period. Reasons for any deviation must be reported for the record. Thus, "voluntary" feels far more like "mandatory." I am opposed to mandatory guidelines for reasons I will discuss later in my testimony.

Further, there appears to be a move in these systems from "offense and offender" oriented dispositions to "offense" oriented dispositions. These offense-oriented dispositions are dictated, at times, by such things as a matrix. If I am correct in my sense of these statutes, a mandatory system of graduated or progressive sanctions constitutes a significant departure in juvenile jurisprudence—one that treats dissimilarly situated juveniles as if they were all alike.

Yet, these youth are not that "collective," singular, devoid of individuality, and alien population of television's popular "Voyager" series. Our children are not "Borg!"

It is very important that a judge retain the discretion to tailor dispositions to protect the public and meet those needs of the child that assist in protecting the public. Those ends are not always in opposition. Often, meeting rehabilitative needs will stem future delinquency, and thus, protect the public.

Finally, much of the legislative history regarding the implementation of graduated sanctions across the nation includes extensive language concerning the importance of early intervention in the criminal justice system. *I agree with the importance of early intervention in the criminal justice system, but note that with the prudent use of available resources and agencies, "early" intervention should actually take place far before these youth are brought to the court as delinquents.*

Why wait for these youths and their families to default to abject failure before we intervene with appropriate prevention services?

ACCOUNTABILITY AND THE PROTECTION OF THE PUBLIC

I promised myself that when I became a judge you would never see a child return to me with a petition numbered 13 or 22. I could not conceive of how a youngster could build up that number of papers with a judge who was actually holding the youth strictly accountable for her actions! I also understood the importance of being consistent and clear in my dispositions.

And while I believed it critical that I address the rehabilitation needs of the particular youth that may have contributed to the occurrence of the delinquency, I never believed that having a drug addicted mother, being poor and having a father in a corrections facility, absolved one in any way from being held strictly accounted for a criminal act.

Thus, I absolutely agree with many of the concerns which, for example, Utah and Texas sought to address with their juvenile graduated/progressive sanction statutes. But, the real world of juvenile courts is not as simple as prescribing a "lock 'em up early and often" antidote.

After several years on the bench, I noticed that a number of youth had returned to me with their 13th or even 19th delinquency petition! I was horrified. After investigation, I discovered that in nearly every instance, these youth had been incarcerated for their transgressions for determinate periods of time, or had been committed to the state—some several times. Yet, here they were.

I attribute this circumstance, in no small part, to the fact that for years, our court had only two significant dispostional alternatives outside of detention sentences: probation and commitment to the state.

Continued probation—infraction after infraction—without serious consequences, including incarceration, sends a terrible message to our youth about accountability. However, commitment without significant behavioral services and services in the home, meant that these youths were returned to the community with the same delinquent disposition, or worse, and to a home or community ill prepared to meet the challenges and the circumstances of these youth.

ACCOUNTABILITY THROUGH "CONTINUUM OF SERVICES" AND PARTNERSHIP WITH SOCIAL SERVICES: NOT "BORG"

The City of Richmond, about three years ago, developed what is described as a "continuum of services" to address the gap between probation and commitment. This program consists of a number of graduated sanctions for juveniles. The sanctions range from intensive day supervision to bootcamp. The services attendant the sanctions include anger management, counseling, and the monitoring of school attendance and participation and teaching values.

Each program has its own specific criteria for placement, and ranges from restrictive to very restrictive. The judges have total discretion as to the use of the programs. And, interestingly enough, the programs are utilized to the point that we sometimes have to wait to have youth placed in them. For bootcamp, this often means incarceration for the youth until a new bootcamp intake begins.

Further, because of the city's attempts to wed the many juvenile programs to corollary city services, we witnessed results that we had not enjoyed before.

Virginia juvenile court judges have hroad jurisdiction, and this jurisdiction extends to being able to order parents, whose children appear before the court, and other household members to cooperate with certain services.

We found that when sanctions were joined with orders by the court for the Department of Social Services to provide "stabilization" services in the home—including assessment, parenting classes, counseling, and other assistance—when the City created a mentoring component to the services—when these services were coupled with residential drug treatment opportunities and intensive mentoring/counseling services for girls—*we began to affect change in these youth in a way which appears to have lowered the rate of recidivism and de-escalated the seriousness of subsequent offenses. The combination of services and sanctions turned these youth around in ways that we did not accomplish for their older siblings—for whom these programs did not exist.*

Further, we took note that with appropriate services and sanctions we never saw most of these youth again.

Many of these "services" could easily have taken place as early intervention services, and in my mind, obviated some future delinquency.

I understand that "prevention" and "services" talk is not always the most popular of discussions in the context of juvenile delinquency. However, I also know that when these services are provided in conjunction with necessary sanctions, the puhlic is better protected than with incarceration and no meaningful, individually tailored services.

GRADUATED/PROGRESSIVE SANCTIONS AND FUNDING SERVICE PROGRAMS

No discussion of juvenile dispositions is complete without recognizing the critical role of funding.

The Utah and Texas programs place great emphasis on the role of the prohation officer. In fact, Texas tied participation in the program to funding. The lion's share of funding for participants then went to hire additional probation officers. I am all for voluntary guidance in sentencing and am definitely in favor of additional prohation officers. However, one study of the Texas experience with "progressive" sentencing suggests that because the funding there did not include the payment of benefits for the prohation officers, many jurisdictions found it difficult to take advantage of the offer. Further, participants expressed concerns that they not only needed funds for personnel, hut also—and critically—they needed funds for programs to implement the guidelines! Thus, for some, the program raised the specter of an "unfunded mandate."

Finally, these participants noted that there was a major shift from diversion programming and funding—even when diversion was appropriate—to loading everyone with a delinquent contact into the system. The impact on caseloads and costs were of great concern.

CONCLUSION

The concept of graduated sanctions is in many ways an appealing one, and its use is a common practice in many jurisdictions. Having guidelines, standards and consistency in sentencing—for persons similarly situated—is desirahle. However, the mandated use of graduated sanctions deprives judges of critical discretion to formulate the best disposition to protect the public and rehahilitate delinquent youth.

Delinquent youth offer the court an unending range of personalities and complexity of circumstance. The combination of appropriate sanctions and rehahilitative services can and does protect the puhlic. Thus, non-mandated graduated sanction

programs that are accompanied by adequate funding for services and the implementation of the sanctions best serves the public. In the long run, however, pre-delinquency prevention programs are the key.

Mr. MCCOLLUM. Thank you very much, Judge Taylor.

Representative Lawlor, you are recognized. Please let us hear from you.

STATEMENT OF MIKE LAWLOR, STATE OF CONNECTICUT, HOUSE OF REPRESENTATIVES

Mr. LAWLOR. Well, thank you very much, Mr. Chairman.

And first of all, I have to say as the others have, this is a tremendous honor for me to be here, and in particular because aside from appearing in the United States Congress, I am also representing all State legislators throughout the country through the National Conference of State Legislators. So in order to do that, I have had to promise to be on my best behavior today. So I will try and follow through on that.

You let me know if I am out of hand.

But I want to say, first of all, two points, some concerns and some suggestions about what we view as the appropriate role of the Federal Congress and the Federal Government in this regard, and also some concerns we have about some of the suggestions which have been made in the past.

And if you do not mind, I would like to use as an example to illustrate some of the points I make our experiences in Connecticut because I think like all of the members of this panel and many of the other professionals on the front lines of the juvenile justice battle, we are very proud of the accomplishments we have been able to make in the last few years, and I hope to highlight some of those for you.

Mr. Chairman, a couple of years ago in highlighting this problem, you yourself made the same points that we have made in our legislature about the focus of the problem. What is it that we could possibly do early on to divert some of these children from a life that turns into either self-destruction or crime or tragedy for other innocent victims?

And it was quite a question that we posed to ourselves 4 years ago, and what surprised me and my colleagues in Connecticut was the uniformity of suggestions that came from all aspects of the community, and I will talk about those in a moment.

But I think one theme that runs throughout the Nation is that some of the changes in the nature of this juvenile justice problem are, in fact, uniform. For example, the problem of guns and the drug business, the intertwining of those two things has led to so much gunfire on our city streets.

The advent of a well organized victims rights movement, where victims of crime felt now that they had every right to participate in some fashion in not only what happened in the adult courts, but also in the juvenile courts, and they brought their concerns to our legislatures.

The concentration of urban poverty and broken families and all that goes along with that, and no surprise that crime would be one of the side effects of that terrible problem. The fact that new community policing techniques had led to more arrests and more chil-

dren and adults being funnelled into our court systems, that frustrated many prosecutors and judges alike. How do they handle this deluge of cases?

And also what is becoming a bigger problem in many States is this whole issue of racial disparities, especially, for example, in our State, in our one juvenile facility, our secure facility. Eighty-three percent of the children in there are either African American or Latino, and this problem complicates our discussion, as you can imagine.

Although the problems across the country seem to be similar, the solutions which various States have chosen range across the board, and I would suggest that part of the reason for that is that in each State we have different institutions, different traditions, different cultures, which causes us to respond to different changes in various ways, and I will explain in a moment some of the unique parts of the Connecticut system which may surprise you.

When we began to reform 4 years ago, we started out with the assumption that what people were frustrated with was simply the fact that there were some very violent kids out there committing some outrageous crimes, and we figured the solution would be simple. Let's just transfer them to adult court and prosecute them, and that would solve the problem.

We learned that that was part of the solution, but as we invited experts from the front lines to come before us, many of them said the very same thing, whether they were the tough on crime advocates or the softies, you know. However you characterize them, people same the same thing.

We are at the front lines. We know the kids who are going to get in trouble, and we can spot it early, and we are frustrated that all of our resources are now expended with the young kids who are in on the murder charges. We would like to be freed up, given the authority and given the resources to intervene earlier where we think we can make a difference, and if in order to do that the worst of the worst kids need to be processed in a different court, the adult court, fine. Free us up to do some good because that is what we are trained and that is what we are committed to doing, and that is why we took jobs in the juvenile justice system.

And as we heard this from police officers and teachers and clergy and youth counselors and judges and prosecutors and juvenile probation officers, there must be something more to this story that we are missing because keep in mind this is a system that is shrouded in confidentiality.

Journalists really did not know what was going on. Even though I am a former prosecutor and attorney, I really did not know how the juvenile court worked, and the more we learned, the more we felt that we could rely on the suggestions of the people on the front lines, and I would suggest to you that kind of thing is happening in each of the 50 States.

First of all, our deliberations very quickly became bipartisan. We realized that there was not a lot of philosophical battling to take place. This was going to take a lot of attention and, in the long run, a lot of resources to begin to make progress, and in the end we came up with what I think is the most comprehensive bill I have

been involved in in the Connecticut legislature, and I have been there 13 years because so much had been left undone.

It included a lot of flexibility and a lot of pushing of resources and authority right to the front line where people had asked to have it, and in large part we relied on the help of the Federal Government in doing this.

As a matter of fact, as we were doing this, the Office of Juvenile Justice and Delinquency Prevention was formulating this comprehensive strategy for serious, violent, and chronic juvenile offenders, and we were working off the draft version of this, but it was tremendously effective to find out what other States had tried and what was effective in other places.

Finally, we decided to establish a broad array, a long menu of options for police, for prosecutors, for teachers, for judges to use when they felt it was appropriate to allow them to intervene at the opportune moment, and so now that many States are well along on this struggle, and you can tell from the speakers here today, I think we have an opportunity to take a step back and consider where we can go from here.

And I would suggest that we have a lot of work to do in State legislatures, but in the Federal Congress as well, there are many choices to be made, and from our point of view as State legislators, we think there are some good choices, and we think there are some bad choices.

First, the bad choices. I think the concerns you have heard today about one size fits all type mandates are a bad idea for the reasons that have been stated, and I congratulate all of the Members of the Congress. I think you have listened carefully to what you have heard from prosecutors and police officers, county, local and State officials as they express concerns about earlier proposals, and clearly, there is progress in the direction of more flexibility, but a finer tuning of what the public policy ought to be, which I think is an appropriate role of the Federal Government.

Because we have all learned that not every 15 year old car thief with a record of several arrests needs to be sent to prison, and not every 9 year old first time truant needs simply to be brought home to their parents. Sometimes the simple cases deserve a lot of attention very early because that is the first time officials learn that there are a lot of problems behind that truancy, for example.

Both the National Conference for State Legislatures and the Council of State Governments have established national policies, and those have been provided to you with our concerns in this regard, and I will not go through each and every one of them, but we do know now that every State is unique, and I will give you one example.

In Connecticut, the State I am from, we have no county government whatsoever. Judges and prosecutors are not elected. They are all career professionals, which changes the dynamic a bit.

The State runs everything. All probation, juvenile and adult, is run by the State government, and on and on and on. This is unique of our State, and I have learned in my experience working with the NCSL that all other States have very unique things which we would find odd in our State.

The good choices. The Federal role has been extremely helpful over the past 4 years as our States have undertaken this process. We have learned from documents such as this telling us what other States have tried and what has worked and what has failed, and I think without their assistance, without the Federal funding that has been brought to our State to allow us to develop and set in motion this array of graduated sanctions programs, I am afraid we would not have been able to get out of the starting gate. So we appreciate that, and we appreciate the flexibility that has gone along with that.

We appreciate the fact that a good deal of Federal funding has been devoted to convening national meetings of decision makers. Interdisciplinary groups, legislators, judges, prosecutors, and the rest talk about what has worked in bringing us together to solve these very complicating problems, and I am sure every State can contribute at least one good idea to this process.

Graduated sanctions in Connecticut have grown from nothing 4 years ago to a vast array of programs today. Four years ago we had about 700 children who were being punished in our system. We had many more cases than that pending, but some were in detention. Some were in community parole, but basically you were either being punished in a facility or nothing was happening to you, and I think that was the reality in many States.

Today, in addition to the fact there are 900 kids in some type of confinement or parole, there are over 1,000 in the various individualized, specialized graduated sanctions programs throughout our State, and by the way, they are all privately run by nonprofit entities which have a tradition of running very successful programs in our State.

And that gives us not only a flexibility of policy. In other words, decisions can vary by prosecutors and judges, but also we have a flexibility of accountability for the programs themselves. If a program does not work, we can shut it down because it is on a contract with the State, and we have been very successful at that.

You know, 4 years ago, there was a detective in the City of Waterbury. It was the youth officer, and he came to our committee, and he said, "I can show you an example of what is wrong with the system." He brought out the rap sheet for a child whose first encounter with the juvenile justice system was when they were 8 years old. It was for truancy, and there was a list of perhaps 30 separate arrests, and they increased as time went by: truancy, then gang membership, then drugs, then burglary, then assaults, and finally he was involved in a homicide, and while the charges were pending for that, he himself was killed in a gang shootout.

He said, "The tragedy for me as a youth officer is I could not intervene when that first arrest took place. Even I knew this was the kind of kid that needed my help. I did not have the resources. I did not have the authority. I could not talk to the school officials because of the complicated confidentiality rules that we used to have in our State. Please change the system to allow me to interview when I can make a difference."

And I think that is what we have done in Connecticut, and that is what every State would like to do, and I can tell you examples of other programs. I will just give you one. I know my time is up.

Yesterday in anticipation of this meeting, I went to visit one of these graduated sanctions facilities that we have, and in it was three separate programs, an after school early intervention program; then a program they call Non-Res, which is 7 days a week, in addition to going to a regular school, 7 days a week, 8 hours a day involved in this program where they deal with a variety of programs; and then the residential 24 hour a day, long-term program.

And in talking to the kids in each program, they were getting some help. They had a good attitude, and the staff was extremely well motivated, but the interesting thing was we said, "What would happen to you in the lowest level; what would happen to you if you started skipping school again?"

And they said, "Oh, my God, they would send me to the Non-Res program." So for them this was a big penalty. It was not incarceration, but they understood there was accountability, and that is what we have achieved, and we would like to have the flexibility to continue doing that.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Lawlor follows:]

PREPARED STATEMENT OF MIKE LAWLOR, STATE OF CONNECTICUT, HOUSE OF REPRESENTATIVES

Two years ago Chairman McCollum asked the three most important questions in the Juvenile Justice debate:

- How many 18 year old killers were repeatedly cycled through our country's juvenile justice system at younger and possible more hopeful stages in their lives?
- What could have been done to hold those young people accountable at the initial discovery of their law-breaking predilections?
- How could the justice system have intervened and made a difference in their lives before they became such a clear danger to the community?

Four years ago I sat where you are today, listening to experts from the front lines of the struggle against youth violence in our communities, trying to decide how best to answer these questions and whether indeed there were any changes in public policy or budget priorities which could reduce the tidal wave of serious cases overwhelming our juvenile courts. In fifty state legislatures, my colleagues struggled with the same dilemma.

Since then, virtually every state in our nation has made great strides in reforming a juvenile justice system which had become out of date in many ways. Guns and their role in the drug business had transformed after school fistfights into the lead story on the evening news. Victims of crime, armed with new rights and vocal allies demanded access to court proceedings and real justice. Concentrations of urban poverty had destroyed traditional family units and, by default, state and local governments had become responsible for the welfare of more children than we could possibly handle. Community policing and new law enforcement tactics meant more arrests and more overcrowded juvenile court dockets. Juvenile detention facilities had become filled with African American and Latino youths, even more disproportionately than adult prisons and jails. The system had reached a breaking point.

SOLUTIONS

Although the problems which led to reform in the states were similar throughout the nation, the solutions chosen by state, county and local policy makers have been far from uniform. What has typified reform in most states, however, is the use of a range of sanctions, allowing intervention at younger ages than ever before, in the hope that children who show early signs of problem behavior can be diverted from a path which often leads to serious offenses and long term incarceration, if not death.

CONNECTICUT BEGINS TO REFORM

I will never forget our committee's hearings on juvenile justice reform in 1995. First, I was shocked by the number of people who came forward to offer ideas. Teachers, clergy, police officers, judges, teen counselors, parents, probation officers, juvenile court judges, career prosecutors all echoed the same frustration. People who work with kids and who care about kids can spot problems long before they become serious, we were told. Professionals and volunteers alike expressed frustration that the old juvenile justice system did not allow them to intervene in a child's life in time to actually make a difference. The rules were too cumbersome and the resources were too inadequate. Instead, the old system seemed to focus exclusively on the kids who had already committed a very serious offense, and these offenders exhausted the courts' time and money, ignoring the less serious cases where kids lives could have been turned around.

In the end, Connecticut chose to establish an elaborate array of programs each consisting of a combination of sanctions and treatment options which had proven to be effective elsewhere. Working with federal officials, we learned of success stories from around the country and we adopted many recommendations of the comprehensive strategy for serious, violent and chronic offenders, developed by the Office of Juvenile Justice and Delinquency Prevention. Since then, your budget authorizations have allowed Connecticut and many states to fully develop many of these graduated sanctions programs. Today, my state has a system that works for us and we are steadily making progress in the fight to prevent violence among teenagers.

THE ROAD AHEAD

This year, we all have an opportunity to take a step back, consider the strides we have made in reforming juvenile justice systems and philosophy around the nation, and decide, where we can and should go from here. I know that I speak for the National Conference of State Legislatures, the Council of State Governments and many other associations of state, county and local policy makers when I suggest that there are some very good and some very bad choices that you can make here in the federal Congress.

FIRST, THE BAD CHOICES

An overly prescriptive, one size fits-all mandate could undermine the progress made in many states. In my state, graduated sanctions in juvenile justice is not simply a matrix of specific penalties applied to specific offenders with specific records. It is a menu of choices available to judges, prosecutors, probation and police officers, teachers and others to use at their discretion, depending on the circumstances of each case. We have developed a flexible approach geared toward immediate intervention and proven results. Not every 15-year-old car thief with a record of several arrests needs to be sent to prison and not every 9-year-old first time truant needs to be simply brought home to his parents.

Both the NC.S.L. and C.S.G. have established national policies and enacted national resolutions urging Congress not to further federalize crime policy and not to enact mandates regarding specific juvenile penalties and procedures and record keeping. I'm sure that you can imagine how frustrating it would be for us to go back to 1995 and start all over again in order to conform to a well intentioned but procedurally foreign mandate with several federal funding penalties. In the process, we could lose some or all of the momentum we have built up during the past four years.

Connecticut is not alone. I have learned many lessons in recent years regarding the uniqueness of individual states. My state, for example, has no county government at all. We have only one court level, no elected prosecutors and no elected judges. The state has sole responsibility for all probation, adult and juvenile. Virtually all graduated sanctions programs are run by the state or by private, non-profit organizations funded by the state. "Juveniles" in Connecticut are only those under the age of sixteen. All sixteen-year-olds are treated as adults for all crimes, and that's the way it has been for more than twenty years.

Each state has developed its own juvenile justice system over the years, so reform must be specifically tailored to what exists in that state already, and not to a national standard which has no relation to institutions, practices and values in the various states. Many states have already discussed foregoing federal funds tied to specific mandates in this area. This is not because these funds aren't needed, but because the cost of the mandated changes would far outweigh the corresponding grants, and because the mandated changes would turn the clock back on the progress which has already been made.

SECOND, THE GOOD CHOICES

The federal government does have an important role to play in stewarding our nation through this very significant transition in juvenile justice. Gun violence among teenagers related to the drug business, for example, is a national phenomenon. Effective strategies which evolve in Oregon should be considered in Connecticut, and a national exchange of good ideas combined with federal funding for pilot projects and replication is a welcome trend. The leadership of this Congress and this Administration has helped us deliver on real juvenile justice reform over the past four years and the results have been reassuring.

Every state has success stories to be told in this battle. Each state can contribute at least one good idea to the national wealth of best practices in saving kids from a life of incarceration or despair, and countless innocent victims can be saved from violent and property crime. So far, you have been a key ally in this national effort. The federal-state-local partnership has worked well and there is much more that we can do together.

GRADUATED SANCTIONS IN CONNECTICUT

Graduated sanctions as a strategy for the states, together with flexible tactics geared to local tradition and individualized outcomes will be a success. Connecticut's experience gives you one example:

> In 1995 Connecticut did not have graduated sanctions in its juvenile justice system. The reality was that the most serious violent juveniles were the focus of the juvenile court, and virtually all other less serious juvenile cases were ignored. There were 222 offenders in our secure juvenile facility, 356 in court ordered community placements and 122 at home on parole supervision. The 1995 system had no other options.

In four years we have grown a graduated sanctions network which in January of 1999 supervised an additional 1,052 juvenile offenders in various programs throughout the state. At the same time there were 226 offenders in our secure juvenile facility, 454 in court ordered community placements and 217 at home on parole supervision.

The 1,052 offenders in the newly established and rapidly growing assortment of graduated sanctions programs would have been ignored by the system just four years ago. We are monitoring and evaluating these programs, and next year we expect to have the first longitudinal study of rates of recidivism and other success indicators for these programs and the offenders they supervise. I have attached a summary of the eleven types of graduated sanctions programs currently employed in our state, together with a description of the target population for each.

A PLEA FROM THE STATES

Today, Connecticut and its 49 sister states across the nation can claim progress in the effort to hold juveniles accountable for the crimes they commit, and to hold the juvenile justice system itself accountable for its own successes and failures. Our goal is to meet the challenge made by the front line professionals who first responded to our pleas for advice and assistance as we began to reform a system which had been overwhelmed by modern problems.

I am pleased to report that morale has never been higher among the dedicated men and women who work with children every day. They now have many of the resources they have asked for in order to lock up the true predators and to intervene in the lives of so many other juveniles who begin to veer off onto the path that has lead so many of their older brothers and sisters to a life of violence or personal destruction. Teachers, counselors, probation and police officers, prosecutors and judges know these signs too well. They ask only that we give them the resources and authority to make a difference in these young lives at the critical moment, and they plead with us not tie their hands with out of place and irrelevant bureaucratic mandates. As state officials, we ask you, our colleagues in the Congress, to do the same for us.

PROGRAM HIGHLIGHTS

- **DIVERSION**

  Target Population High risk/high need juveniles entering the juvenile justice system for the first time, and who are on non-judicial supervision.

  Program Coordinated service brokering geared to access resources (memberships, equipment, tuition) for non-judicially supervised juveniles who are referred by a juvenile probation officer

- **MEDIATION**

  Target Population Juveniles referred to court for cases involving interpersonal conflicts between relatives, neighbors' children and other children.

  Program A voluntary alternative to traditional court processing to resolve disputes and address the root causes of conflicts that may trigger future offenses. Where appropriate, formal mediation and less formal victim/juvenile dialogues take place.

- **GATEWAY**

  Target Population Juveniles who have been arrested one or two times for charges identified as "gateway" type offenses, and who exhibit high risk behavior and/or fit the profile for high risk of recidivism.

  Program Gateway program services intervene at the entry point into the system instead of waiting until the juvenile becomes more seriously involved, requiring more intensive and expensive sanctions and intervention. Individual, group and family services have been designed for three groups of gateway offenders: juveniles with learning disabilities whose acting out behaviors have led to problems with the juvenile justice system; juveniles involved with auto-theft related activities; and girls entering the juvenile justice system.

- **COURT-BASED ASSESSMENTS**

  Target Population Juveniles in need of psychological, psychiatric, substance abuse, and/or sex offender evaluations for whom evaluations are ordered by the court, or whose juvenile probation officer requests an evaluation.

Program comprehensive assessment and evaluation of juveniles incorporates the Juvenile Probation risk/needs assessment in conjunction with diagnostic centers in each juvenile court. A contract model is used to coordinate the psychiatric/psychological, substance abuse and sex offender evaluations. This system provides an improved means to determine which alternative sanction, if any, is appropriate, and assists the court in making the best program/placement decision for each juvenile referred.

- **OUTPATIENT MENTAL HEALTH AND SUBSTANCE ABUSE TREATMENT**

Target Population Juveniles under some form of probation supervision who exhibit the need for substance abuse intervention or outpatient treatment, and/or outpatient mental health treatment

Program Outpatient mental health and substance abuse treatment designed to engage young offenders and their families, which includes outreach to the home, and non-traditional treatment modalities. These programs will address non-compliance as treatment issues and not a reason for client discharge

- **JUVENILE JUSTICE CENTERS**

Target Population Juveniles under some form of probation or parole supervision who have exhibited moderate to serious court involvement or who are at high risk for continued involvement with the juvenile justice system.

Program The Juvenile Justice Centers are center-based, and also rely heavily on local community partnerships and agreements to serve juvenile delinquents and their families. Many strong, youth-oriented services exist in many of Connecticut's communities. It is often difficult for court-involved youth and their families to access these services. The Juvenile Justice Centers serve as a community-based resource to link juveniles and their families to existing services, while often times filling gaps in local services with in-house programming.

- **INTENSIVE OUTREACH AND MONITORING**

Target Population Juveniles who are facing commitment to DCF for delinquency, but who can benefit from this home-based service in lieu of commitment.

Program Case managers who are available 24 hours a day, seven days each week, and work non-traditional hours, meet with clients in the context of the family and provide access to community-based services which will remain in place even after the case manager's involvement has been completed.

- **ALTERNATIVES TO DETENTION**

  Target Population Juveniles who are placed in Juvenile Detention Centers, but who have been assessed as appropriate for staff-secure programming in lieu of being incarcerated in Detention.

  Program The ADPs offer both residential and intensive day-reporting programming in Hartford, Bridgeport and New Haven. The residential programs are licensed by DCF and provide intensive staff-secure services. Day reporting programming operates seven days each week, and is equally intensive. Services include education, structured recreation, community services, case management, individual and group services, family work, and access to mental health and substance abuse treatment intervention and treatment.

- **JUVENILE SUPERVISION AND REPORTING CENTERS**

  Target Population Juveniles sentenced to probation who would otherwise be committed to DCF for delinquency but who can be served and supervised through this intensive community-based program.

  Program Six to twelve month intensive staff-secure day reporting program, with licensed, short-term residential services available. Services include education, structured recreation, community services, case management, individual and group services, family work, and access to mental health and substance abuse treatment intervention and treatment.

- **COMMUNITY DETENTION FOR GIRLS**

  Target Population Girls detained on a pre-trial basis who are not appropriate for alternative to detention programming or intensive supervision

  Program Physically secure program with focus on girls issues. Services include Services include education, structured recreation, case management, individual and group services, family work, and access to medical and mental health and substance abuse education, intervention, and treatment.

- **RESIDENTIAL COMMUNITY ALTERNATIVE PROGRAM (R-CAP)**

- **Target Population** Boys who have failed JSRC or Outreach and Monitoring or for whom placement in such programs is questionable

Program 90 day physically secure program focusing on physical fitness and wilderness programming. Additional services include: year round education; medical and mental health services; substance abuse education, intervention and treatment; case management; community service; family visitation and counseling; comprehensive aftercare planning.

- **LONGITUDINAL EVALUATION OF JUVENILE PROGRAMS**

This three year evaluation of the OAS funded juvenile programs will provide a baseline to measure the efficacy and outcome of juveniles in particular programs, and will begin to track the program's effect on juveniles moving through the system to determine how many re-appear in the criminal justice system. The evaluation studies juveniles who participate in the OAS network of programs, and also studies comparison groups of juveniles who were committed, or who did not receive services through the network

OFFICE OF ALTERNATIVE SANCTIONS
JUVENILE PROGRAMS

CONTINUUM OF COMMUNITY-BASED ALTERNATIVE SANCTIONS

Court-based Assessment	Alternatives to Detention	Early Intervention Programs	Intermediate Sanctions	Mental Health & Substance Abuse
Risk /Needs Mental Health/ Substance Abuse Evaluation	Non-Residential Services Residential Centers	Mediation Diversion Gateway Programs Juvenile Justice Centers	Juvenile Justice Centers Intensive Case Management Juvenile Supervision & Reporting Centers	Outpatient Services Access to Residential Treatment

Mr. MCCOLLUM. Thank you very much, Representative Lawlor. That was good insight for us.

Professor Steinberg, you are recognized.

STATEMENT OF LAURENCE STEINBERG, PH.D., PROFESSOR OF PSYCHOLOGY, TEMPLE UNIVERSITY

Mr. STEINBERG. Thank you very much.

I have a different perspective than my fellow witnesses. I am a social scientist. I do not practice within the justice system at all.

I happen to be the Director of a national initiative that is sponsored by the MacArthur Foundation that is examining whether and to what extent our juvenile justice policies ought to be changed in light of current trends in youth crime and youth violence.

I am also a Fellow of the American Psychological Association, and I am presenting this testimony on their behalf, as well.

If there is one thing that research on effective responses to juvenile offending tells us, it is, as many of my colleagues up here have said, that there is no such thing as one size fits all, even if we are talking about kids who have committed the very same offense.

I agree that we ought to respond swiftly and firmly to all juvenile offenses, no matter how minor they are, but the best response, the one that is most likely to prevent future offending, depends on the offender and it depends on the circumstances of the offense.

We know that more than two-thirds of nonviolent offenders never reoffend at all without any sanction or intervention. So for those kids, diversion out of the justice system is the best; it is the least costly response; and it is the one that is going to be least likely to harm that child's life in a way that is going to have long-term repercussions.

Other juveniles who have committed the exact same offenses may need some sort of intensive, family-based or community-based intervention. Some number will require some kind of longer term residential placement. Some need treatment for substance abuse. Others need special education. Some need psychological counseling. Some may need all of the above.

Well, you get my point. This is a very, very heterogeneous group of young people that we are talking about.

Now, I am not opposed to sanctions for juvenile offenders, and I am not even opposed to some models of graduated sanctions. I think it depends on what the sanctions are, how much flexibility the court has in imposing them, and the extent to which those sanctions can be combined with treatment services.

We have got to keep in mind that there are some offenders who will be affected by punishment in a way that will make them more likely, not less likely, to reoffend, and we know from research that this is especially true if the punishment brings the nonviolent offender into contact with violent and more serious delinquents or with adult criminals.

Adolescence is a critical point in development when many decisions and choices that are made have long-term implications for the young person's successful transition into adulthood. When a young person's educational or occupational development is interrupted when it does not have to be—for instance, if a juvenile who is actually not dangerous is forced to spend time in a correctional

facility—when we interrupt the educational and occupational development of a young person, that young person can end up at greater risk for later unemployment, for mental health problems, and for criminal activity.

And I think one thing that we can all agree on here in this room today is that none of us wishes to respond to a juvenile offender in a way that is going to increase that juvenile's chances of becoming a danger to the community.

What we know from research is that effective intervention requires the careful, individualized assessment of a juvenile's history and living circumstances, as well as the conditions surrounding the offense. So a prescribed system of mandatory, graduated sanctions that is based solely on the nature and number of a juvenile's offenses will impede the juvenile justice system's ability to respond intelligently and with appropriate flexibility.

I think the system's ability to respond effectively will also be compromised by mandating that we process proportionately more nonviolent offenders through court, the majority of whom could be safely diverted from the system at tremendous savings to taxpayers.

Now, hearings like today's rarely include testimony about the juvenile justice system's successes: Young people who through appropriate diversion or effective rehabilitation return to their community and develop into productive taxpaying citizens.

Of course, it is possible to recount stories of offenders who were not sanctioned initially and who later reoffended, perhaps even violently, but this is not evidence that the reoffending would not have occurred if these juveniles had been sanctioned initially. We simply do not know.

And, in fact, we can find many, many examples of juveniles who were sanctioned, even very harshly, and who after their release went on to reoffend violently. This is what research on youngsters who have been tried and incarcerated as adults tells us.

I think it is tempting to think that if a given punishment has not worked, the sensible thing to do is to punish the person more or more harshly. Well, more is not always better. When a drug has been prescribed for an illness fails to work, the best response is not always to give more of the same medicine. Indeed, quite often the best response is to change the course of treatment entirely.

And in the case of a juvenile who has offended more than once, the best response is to examine what was done initially, figure out why it was not effective, and respond in a way that is likely to be successful.

Research shows that we can make mistakes, and we can make mistakes sometimes by intervening in ways that are inappropriate for a given offender. I have to tell you that there is no scientific research indicating that increasing the severity of a juvenile's punishment lessens the chances of his or her offending. There is even evidence from some studies that severe sanctions increase the risk of reoffending. There is evidence of that in the Wolfgang study that was cited before, and there is no evidence that punitive strategies have a general deterrent effect on juveniles.

What we have evidence for is that high quality, developmentally appropriate, delinquency prevention and treatment programs work.

The States and local communities need the funding and the freedom to develop and to maintain effective prevention programs, high quality, comprehensive interventions for serious offenders, and secure residential facilities for kids who pose a genuine risk to public safety.

So the general principle of responding differently to repeat offenders than first offenders is a reasonable one, and it is one with which I concur. But insisting that all juvenile offenders be sanctioned punitively and mandating that the severity of the punishment must increase with each offense in a rigid, predetermined fashion is unwise, and it is potentially very dangerous.

Forcing States to implement a mandatory, graduated sanctions policy for nonviolent offenders will siphon money away from delinquency treatment programs that work, and it will overburden an already overwhelmed and inadequately funded juvenile justice system, and it is likely, we think, to have the unintentional effect of increasing, not decreasing, violent juvenile offending.

Changes in juvenile justice policy need to be based on solid research evidence, not intuition and not anecdotes. In this case, the research evidence that we have points conclusively to the benefits of individualized, developmentally appropriate responses to juvenile offending, and in order to promote public safety, Congress should support State and local initiatives to do just this as they see fit to do in their local communities.

Thank you very much.

[The prepared statement of Dr. Steinberg follows:]

PREPARED STATEMENT OF LAURENCE STEINBERG, PH.D., PROFESSOR OF PSYCHOLOGY, TEMPLE UNIVERSITY

I am the Laura H. Carnell Professor of Psychology at Temple University in Philadelphia. I specialize in the study of psychological development during childhood and adolescence. I received my Ph.D. in Developmental Psychology from Cornell University and have held faculty positions at the University of California and the University of Wisconsin. I am a Fellow of the American Psychological Association and the current President of the Society for Research on Adolescence, the largest professional organization in the world of social scientists interested in psychological development between the ages of 10 and 20. In addition, I am the Director of the John D. and Catherine T. MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. This initiative is examining whether and to what extent our juvenile justice policies should be changed in light of current trends in youth violence.

I can think of very few topics that inspire more heated, or more misinformed, debate than that of juvenile crime. I would like to take this opportunity, as a social scientist who works with hard facts, and not inflamed rhetoric, to clarify a number of key issues for this committee.

The graduated sanctions proposal that is presently under consideration would represent a significant change in practice. As such, it warrants our very careful scrutiny and deliberation.

If there is one thing that research on effective responses to juvenile offending tells us, it is that there is no such thing as "one size fits all," even when we are talking about youngsters who have committed the very same offense. I agree that we should respond with celerity and certainty to all juvenile offenses, no matter how minor. But the best response—the one that is most likely to prevent future offending—depends on the offender and the circumstances of the offense. More than two-thirds of nonviolent offenders never reoffend at all, without any sanction or intervention whatsoever. For most first-time offenders, therefore, diversion out of the justice system is the best and least costly response, and the response that has the least likelihood of harming that child's life in a way that will have long-term repercussions. Other juveniles may need some sort of intensive intervention, either family-based or through a supervised community-based program. A smaller number will require some sort of longer-term residential placement. Some need treatment for substance

abuse, while others need special education, and still others need psychological counseling. Some may need all of the above. Adolescence is a time of tremendous variability.

I am not opposed to sanctions for juvenile offenders. Indeed, there are some offenders for whom punishment is a very appropriate response. But there are other offenders who will be affected by the very same punishment in a way that will make them more likely, not less likely, to reoffend. We know that this is especially likely if the punishment brings the nonviolent offender into contact with violent and more serious delinquents, or with adult criminals. Adolescence is a critical period in development, a period during which many decisions and choices have long-term implications for the successful transition into adulthood. A young person whose educational or occupational development is interrupted when it need not be—for instance, if a juvenile who actually is not dangerous is forced to spend time in a correctional institution—will end up at greater risk for later unemployment, mental health problems, and criminal activity. Surely none of us here wishes to respond to a juvenile offender in a way th at is going to increase that juvenile's chances of becoming a danger to the community.

My point is that effective intervention requires the careful, individualized assessment of a juvenile's history and living circumstances, as well as the conditions surrounding the offense. I am concerned that any prescribed system of mandatory, graduated sanctions that is based solely on the nature and number of a juvenile's offenses, without taking into account the juvenile's history and stage of development, will impede the justice system's ability to respond intelligently and with appropriate flexibility. Moreover, the system's ability to respond effectively will be further compromised by implementing policies that will mandate that we process proportionately more nonviolent offenders through court, the majority of whom could be safely diverted from the system, at tremendous savings to taxpayers.

Hearings like today's rarely include testimony about the juvenile justice system's successes—young people who, through appropriate diversion or effective rehabilitation, return to their community and develop into productive, taxpaying citizens. Of course it is possible to recount stories of offenders who were not sanctioned initially and who later reoffended, perhaps even violently. But this is not evidence that the reoffending would not have occurred if these juveniles had been sanctioned initially. Moreover, one can find many, many examples of juveniles who were sanctioned, even harshly, and who, after their release, went on to reoffend—as research on youngsters who have been tried and incarcerated as adults indicates. As some of you know, reoffending is more likely among juveniles who have been sanctioned within the criminal justice system than it is among their counterparts who have been sanctioned and treated as juveniles.

It is tempting to think that if a given punishment has not worked, the sensible thing to do is to punish the person more, or more harshly. But more is not always better. When a drug that has been prescribed for an illness fails to work, the best response is not always to give more of the same medicine. Indeed, quite often the best response is to change the course of treatment entirely. In the case of a juvenile who has offended more than once, the best response is to examine what was done initially, figure out why it was not effective, and respond in a way that is likely to be successful. We can easily make things worse by intervening in a way that is inappropriate for a given offender.

There is no scientific research indicating that increasing the severity of a juvenile's punishment lessens the chance of his or her reoffending, and there is even some evidence that severe sanctions actually increase the risk of reoffending. Nor is there any evidence that punitive strategies have a general deterrent effect on juveniles. In contrast, there is strong research showing that high-quality, developmentally-appropriate, adequately-funded, delinquency prevention and treatment programs work. States and local communities need the funding and freedom to develop and maintain effective prevention programs, high-quality comprehensive interventions for serious juvenile offenders, and secure residential facilities for the small proportion of offenders who pose a genuine risk to public safety.

The general principle of responding differently to repeat offenders than first offenders is a reasonable one, and one with which I concur. But insisting that all juvenile offenders be sanctioned punitively, and mandating that the severity of the punishment must increase with each offense in a rigid, predetermined fashion is both unwise and potentially dangerous. Forcing states to implement a mandatory graduated sanctions policy for nonviolent offenders will siphon money away from delinquency prevention and treatment programs that work. It will overburden an already overwhelmed and inadequately funded juvenile justice system. And it is likely to have the unintentional effect of increasing, not decreasing, violent juvenile offending.

Changes in juvenile justice policy need to be based on solid research evidence, not intuition or anecdote. In this case, the research evidence points conclusively to the benefits of individualized, developmentally-appropriate responses to juvenile offending. In order to promote public safety, Congress should support state and local initiatives to do just this.

Mr. MCCOLLUM. Thank you very much, Professor Steinberg.

I would like to comment, first of all, to both you and Judge Taylor, in particular, because you have driven home a point that I concur in. I think that maximum flexibility for judges and courts in dealing with juveniles is very important, despite the fact that we have advocated and I do advocate graduated sanctions. A lot of times this has to do with language barriers and communication.

It strikes me from what I have heard in the past, and I heard again this morning, that what we are concerned with when I use the terminology is the need to have some kind of a sanction, not punitive in the sense of jail or incarceration or house arrest or something of that nature, but some kind of a sanction that is meaningful to a youngster from their very first juvenile miscreant act.

And it is not well defined perhaps, and when you say graduated, it may not be more severe punishment, but it would be more intense. The youngster needs to understand there will be consequences, and I prefer that word.

So I just want to make that clear, not mutually exclusive, but I am fascinated by the guidelines that Texas uses, Mr. Shackelford, mostly because it appears that what you are attempting to do here is something like we do on the Federal level with our sentencing guidelines.

But I am not completely clear. Level one, you have explained very carefully, might not involve a misdemeanor. There are various ways a youngster could come before you, and there is no necessity for a sanction that I would consider a sanction there.

Level two, though, does involve the potential for misdemeanors that do not involve a firearm and are not that serious, and it does include a number of options here: inform the child of progressive sanctions in future offenses; inform the parents, et cetera. It says, "Require restitution to victim or community service, restitution," and so on.

What I am curious about is are these menu items items the judges can choose from or do you anticipate that there be community service or restitution. Is it cumulative or is it singular? How is it interpreted in Texas?

And of course, that would apply to the other levels as well.

Mr. SHACKELFORD. The way we interpret it is, as you will notice on the right column, each of the top items is in bold.

Mr. MCCOLLUM. Yes.

Mr. SHACKELFORD. And that is what we call the primary sanction. If you do that sanction, you have met the requirements of the level. So at level two it would be deferred prosecution or court ordered probation for three to 6 months.

And the rest, I think it is sort of a menu of what is appropriate. There may not be any restitution to pay to a victim. So in that case, it would not be appropriate obviously, and what services are available. We have some very rural counties with 100 people, and they may not have a community service restitution program.

So from outside of the first one, which is the required or primary sanction, I think the others are at the court's discretion.

Mr. MCCOLLUM. So if a youngster spray painted graffiti on a warehouse wall, which has been my illustration over the last 2 or 3 years, and was charged with a misdemeanor, first time offender, never before in juvenile court for any reason before, under a level two you have got here, he or she might or might not receive a sanction in the sense of actually having community service. That would be in the judge's discretion?

Mr. SHACKELFORD. That is true, yes. Typically if there is damage and there is a victim, in the case of spray painting there obviously would be. They are going to require restitution to the victim.

Mr. MCCOLLUM. Well, my biggest concern is that Judge Taylor or Judge West do not have the resources from the legislature so that they can have the probation officer, so they can have the after care, the follow-through, the services, et cetera, and that was the idea behind these juvenile block grants, so that they will be willing to exercise some of these items they might not otherwise feel they can with the resources.

Judge Grossmann, how common is it to see today graduated sanctions similar to what Mr. Shackelford has described in Texas? Is this common?

We talk about graduated sanctions. I am kind of curious what you see as the definition. You know, how severe; how restrictive would we be? This is fairly flexible, but it is a well defined set of procedures for a judge to follow. How common is that? Is this unique to Texas or do we have 20 States that have something like this? Do you have any idea?

Could you please pass the microphone to him, Judge West?

Mr. GROSSMANN. I do not think it is unique to Texas necessarily, but I do not think it is common. I prefer to think of this sanction subject in the sense that a court needs to be richly resourced. If you will give judges the opportunity to make choices, I think most judges understand the dynamics of how children's minds work and how they respond to the various things that the court can do.

The problem we have in juvenile justice today is that the courts are not richly resourced. They have few choices and are left between a very mild response, which they keep repeating, or something that is Draconian, and that is wrong, and I think you understand that.

Mr. MCCOLLUM. Well, I think what you are saying to me reconfirms what we have talked about before, and that is the need for Congress in providing these grants for getting more probation officers to leverage the legislature into some kind of a program which makes them provide the money.

In other words, if your State, Mr. Lawlor, to get the money has to have a program that has sanctions with a good deal of flexibility but nonetheless some sanction for the first time offender, then you are going to have to provide the additional resources the judge and the court needs in order for this to happen, and that is what I am getting at when I say that.

And I am going to be a little flexible with my time because I want to make sure that I get this sanction question down, and I will yield to Mr. Scott for what he needs.

Judge West, you have used the term as well, and you have been pretty defined about it in Virginia. Is the graduated sanction program in Virginia modeled similarly to Texas'? Is it laid out in writing? How do you define a graduated sanction in terms of application?

Ms. WEST. Virginia's graduated sanction concept is not nearly as well defined as what Texas has, and I was sitting here thinking that I need to ask for a copy of that. I really like what they are doing there.

We use the term very loosely, and it is a jurisdiction by jurisdiction application of that term. As Judge Taylor said, we also use the term "continuum of services and sanctions," which is another good term for the same type of concept.

But it really is dependent on the locality, on the resources available, and there is nothing specific. Virginia has increased their funding to juvenile justice, as well, especially to the localities. They are giving, I think, $35 million to be split among the local jurisdictions this coming fiscal year, which is quite a bit of money, but it is still probably not enough to provide the services that are needed.

I wanted to make the point, and Judge Taylor hit on this, that judges were doing the best they could with what they had. I know that a lot of judges were very resistant to juvenile justice reform in a lot of ways because they felt it was an indictment on them, that people were criticizing them and saying that they were not doing their jobs.

But I am here to say that they were doing the best they could with what they had. They just needed the additional resources.

Mr. MCCOLLUM. That is what we heard a couple of years ago when we first started down this path with hearings around the country from all facets of the juvenile justice parties. The resources were not there. How do we leverage that? And what we are not doing, we are hearing judges say again and again and again, is we are not getting at these young offenders, the first time offenders, with the type of response and consequences that they need. We do not have the diversion programs and we do not have the sanctions because we do not have the resources.

I am not going to take much more time, but, Mr. Sukhia, you have been involved, as well, with the graduated sanctions. You know, when we pass this legislation, we want to have minimal strings attached, which I think each of you has said is what you would prefer. You do not want the Federal Government telling you what to do.

I heard one of you say one size does not fit all, and I certainly concur with that, but the reason for there needing to be, in my judgment, something in here that says, "State of whatever, you need to help us with this, provide some money or whatever," there needs to be something written about these sanctions since that seems to be the kick starter.

How do we define it flexibly enough to make it work and yet not be so ambiguous that it is meaningless if we provide a condition that you have to have graduated sanctions or some sanctions in order to get into this program?

Mr. SHACKELFORD. I think the possible model that you may consider would be you had mentioned the Federal sentencing guide-

lines. There may be someplace for a range or a guideline, sort of goal that if established by a State would entitle the State to receive certain of these funds.

I will note that in Florida, while I mentioned that there are 2,000, average daily population is about 2,000 persons. Some 58,000 individuals, juveniles, go in and out of the juvenile system every year. So there are other, of course, efforts on the part of the Department of Juvenile Justice short of incarceration.

And it is true that that is not the only alternative, nor is it the only appropriate alternative, and it is true that these studies that I was citing were saying some meaningful response, and we are not limiting that response to incarceration.

So I do know that Florida has a system which employs various mechanisms, and I would agree with the chairman and with the other witnesses that you want a system which would allow for the broadest flexibility for the judge who is sitting across the courtroom from and can assess the appropriate sanction to be imposed in a given situation.

Mr. MCCOLLUM. Thank you. Thank you very much.

Mr. Scott, I want to recognize you or Mr. Conyers, whichever.

Mr. CONYERS. Thanks, Ranking Member Scott.

This will not take long.

Mr. MCCOLLUM. Mr. Conyers, go ahead.

Mr. CONYERS. Thank you.

Because there is something unreal about this hearing. Most of the juvenile systems are in disrepair. The question of race and the criminal juvenile system and the juvenile system cannot be ignored.

Overzealous prosecution is what we have been guarding against for a long time, and of course, we are under resourced.

Now, against that backdrop, you know, it seems like we are talking about that the system is just dysfunctional by the nature of the way it is structured, but these are very basic problems.

In my State, the issues of abuse of children, the rape of women in women's prisons, the close down of psychiatric services, under resourced, Judge Grossmann, is an understatement.

Now, against all of this we have a variety of buzz words that are always appropriate that really disturb me. Now, there are a number of bills in the making here, and I would like to volunteer to the chairman and the ranking member we have got the McCollum bill in some stage of gestation, the Stupak bill. Scott may be forced to put in a bill. The Department of Justice has a bill.

So all of this is going to filter down one of these weeks, and some will be thrown out, and some will be considered, but the thing that bothers me, Bobby, is that I think we ought to have a review of the juvenile systems in all of the several States. Maybe there are some good ones somewhere that I would like, you know, just to be different, to hold up a great example, but I have never seen one.

Of course, we only get called where there is a fire. We do not get invited to go to the good ones.

So do you sense my problem here, members of the panel? Could anybody, including Frank Horton, lecture me about what kind of medication I might want to take to feel better about all of this than I am right now?

Mr. STEINBERG. Well, if I may, I think you are pointing to the need to attack this problem from multiple vantage points. Many of the issues that you began your comments with having to do with the abuse of children, having to do with the factors that lead kids into anti-social behavior, need to be addressed in any comprehensive package that is aimed at dealing with juvenile offending.

In answer to your last question, I might say that I do not think that one can point to any one State that has a successful juvenile justice system. What we can point to are programs that work, and I would be happy after this hearing to provide your office with a list of programs around the country that work that take different kinds of approaches.

Mr. MCCOLLUM. I would like to interrupt only to this extent, Mr. Conyers. I know Judge Grossmann wants to comment. We need to let Mr. Scott ask his questions, too, because we cannot have this room when we come back, as well as these witnesses having to go, because they have another hearing at two.

But to whatever extent you can submit some response to Mr. Conyers' question that he is asking in writing, it would be helpful, but if you would, I would suggest Mr. Scott needs to ask questions.

Mr. CONYERS. That is fine with me.

I would like to invite that the ranking member and I will be available for any discussions, meetings, written communications that are appropriate.

Mr. MCCOLLUM. Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, one of the things that has struck me is the consensus that we have heard today. We have people on the panel from, frankly, all walks of the political spectrum, and there is a consensus that judges stuck with a choice between probation or incarceration is not an adequate choice. You do not solve the problem by sending kids to adult court because 85 percent of them walk, and that we need something in between.

Early intervention; we need to address the problem as early as possible, and we also need some intermediate sanctions. You can call it graduated sanctions or whatever you want to call it, but something meaningful in between.

And I think to the extent we can just listen to this testimony and develop the consensus, I think we will have an excellent basis on which to act.

We have heard that Texas has a lot of intermediate sanctions. Since we do not have the time to go into detail, I would like to hear what some of these alternatives are in Richmond, in Florida, in Cincinnati, what things you can do other than incarcerate and super secret probation, I mean, is what you end up with.

One of the services that Judge Taylor pointed to, the fact that you have to have the services, is the fact that mental health resources are frequently needed, and to the extent that you are trying to just punish someone who need mental health resources really does not get to the problem.

Some of the things that have worked, CASA volunteers, court appointed special advocates, mentors, and other programs that they can use are extremely effective, but the complete consensus of the

panel has been that those intermediate sanctions and graduated sanctions are extremely effective.

I was struck by Mr. Lawlor's comments that the Federal role needs to be reexamined. Mandating and federalizing really does not address the problem; that what we need is early intervention and the intermediate sanctions that everyone has talked to.

So, Mr. Chairman, to the extent that we can use this testimony as a basis for our actions, I think we will have the basis for significant consensus, particularly in light of the fact that some of the things recommended yesterday by the Justice Department just, frankly, did not come up today as things that we need.

We have a minute or two. Does anyone have any additional comment they want to make?

Mr. Lawlor.

Mr. LAWLOR. Thank you.

I just wanted to say one thing briefly. My advice would be not to confine your question to what extra resources prosecutors and judges need. What we have found was that in many cases teachers and social workers and counselors in the community and community groups and churches, for that matter, played a major role in intervening.

And by breaking down the obstacles, the barriers between those various institutions and allowing them to get involved whenever they thought it was appropriate, you would find that you would get great results because the courts oftentimes are overwhelmed, and these other people are able to do things very quickly.

Mr. SCOTT. And that is consistent with the continuum of services that Judge West mentioned.

Mr. GROSSMANN. Congressman, it is the progressive and forward looking court that does the very thing that the last witness just mentioned. We rely upon the community in Cincinnati to assist the court in many ways, both formal and informal. Any court that does not do that is missing some really useful resources.

So it is a broad spectrum really that we are talking about, not a narrow one.

Mr. KESTER. Purchase of services is a solid way to make money available to the courts for much of these alternatives that we have been talking about, purchasing in the private sector, and you can make money available to the courts for a wide range of services, from nonresidential, psychological testing, counseling, all the way through to 24-hour supervision, placement in residential facilities as a last step before they go on into a juvenile institution.

And much of the money that we receive through the Juvenile Justice and Delinquency Prevention Act goes for that purpose. It goes to local juvenile courts to purchase alternatives rather than put the kids further in the system.

So we do have some of those intermediate sanctions that you are speaking of.

Mr. SCOTT. We have two final, quick comments.

Mr. SUKHIA. Okay. I just wanted to say that Thomas Jefferson said that the chief aim of government is to protect life. Abandon that and you have abandoned all.

So I guess, yes, I think we need to focus on these alternatives for those some 89 or so percent, or even more, in Florida who are

not among those violent felony juvenile offenders, but we cannot ignore the fact that we do have in Florida, for instance, 12,000 violent juvenile offenders, who in my view are not being properly addressed by either the juvenile justice system or the transfer adult system.

And though it is a small percent, because of the 150,000 offenses you have 12,000 violent, it is still appalling. That 7 percent is a problem because it is an issue that is current and ever present in the minds of our citizens because they are victimized by those persons who commit those violent felony offenses.

Mr. SCOTT. We are about to miss a vote if we listen to everybody. so very quickly.

Mr. STEINBERG. I can say this in ten words or less.

Mr. SCOTT. Okay.

Mr. STEINBERG. I just would hope that as you craft this legislation that you provide adequate resources for systematic research to see what works and what does not work. That is a very important part of what we need to do.

Mr. TAYLOR. Not to put too fine a point on it, we need to define services, too, because in many of the programs that we have in States they call providing money for services hiring probation officers. In many places where you hire probation officers, they cannot even achieve some of the programs that you ask them about and steps because they do not have the money for it.

So if you have resources for real services and not just hiring probation officers, you will find that you will protect the public because if those issues are addressed, more than likely these folks will not be coming back to us.

Mr. MCCOLLUM. Well, I want to thank all of you. This was a terrific panel. I could go all afternoon with you, and I really regret these votes have interrupted us. Bobby Scott and I both feel that way, but we have gotten a lot out of it.

There will be some written questions to you, and we hope you are there as a resource for us as we write this legislation.

Thank you again. This hearing is adjourned.

[Whereupon, at 1:01 p.m., the subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE CHILD WELFARE LEAGUE OF AMERICA

The Child Welfare League of America is a membership association of over 1,000 public and private, non-profit agencies throughout the country. Our member agencies serve some three million children, youth, and families every year, many of whom confront significant challenges including adjudication, incarceration or other involvement with the justice system.

As Congress considers juvenile justice legislation again this year, CWLA urges close scrutiny of the issues raised in recent proposals, especially in light of recent crime trends and increasing information about the value of prevention and early intervention. The most recent crime data highlighted that in 1997, for the third year in a row, the total number of juvenile arrests for Violent Crime Index offenses—murder, forcible rape, robbery, and aggravated assault—declined. Evidence also continues to mount that early intervention and treatment can be successful and cost-effective in preventing and reducing crime.

We firmly support early intervention and treatment as the best juvenile crime prevention policy. Too many children grow up without adequate family and community support or the opportunity to build productive futures. We need to create a multifaceted response to youth violence that begins by restoring hope for the youngest children in the most troubled families and communities. At the same time, we need more thoughtful responses to address the problems of juvenile offenders who have records of serious violence.

The Juvenile Justice and Delinquency Prevention Act (JJDPA) provides federal leadership in juvenile justice, encouraging community-based alternatives to incarceration and requiring states to deinstitutionalize status offenders and nonoffenders and remove youths from adult jails and lockups. The law is based on the premise that a separate system of courts and intervention services is needed to serve the vast majority of delinquent youths.

One major problem with the juvenile justice system is that it incarcerates youths who would have been better served by community-based rehabilitative services. Most youths sent to correctional facilities should not be there. A U.S. Department of Justice analysis of 28 state corrections systems found that less than 14 percent of the youths committed to these facilities were detained for serious or violent crimes. More than half of those in the facilities were serving time for property or drug crimes and were experiencing their first commitment to a state institution. Another study found that an average of 31 percent of juveniles housed in state facilities could be placed in less secure settings and at much less cost to taxpayers based on objective public safety risk factors.

We should invest in proven and promising strategies for intervention and the rehabilitation of young people in the juvenile justice system. We should expand programs that help at-risk and disadvantaged youths succeed and reduce the chance that they will be involved in violence. Such activities for at-risk and disadvantaged youths include gang diversion; specialized Job Corps, job placement, employment and vocational training, and national and community service; substance abuse prevention and treatment programs; special education; specialized family foster care; day treatment; mentoring; family dispute resolution; and after-school, weekend, and evening youth programs with academic, vocational, athletic, and arts exploration to provide supervised learning opportunities for young people. These kinds of programs offer life-enhancing alternatives to criminal activity.

In addition to increasing support for sound prevention strategies, the four core requirements in the Juvenile Justice Delinquency Prevention Act provide critical pro-

tections for youths in custody and must be retained in any new legislation. The following are of immediate concern in the current debate.

- *"Sight and sound separation"* requires that juveniles may not have (regular) contact with adult offenders. We must not allow "incidental" contact between children and adult inmates, which in many jails will mean that children will be walked down hallways past adult cells and thereby subjected to verbal abuse.
- *"Disproportionate confinement of minority youth"* requires that states determine the existence and extent of the problem in their state and demonstrate efforts to reduce it where it exists. In virtually every state, minority youth are over-represented at every stage of the juvenile justice system, particularly in secure confinement. Current law directs states generally to "address" this issue, without requiring release of juveniles or incarceration quotas or any other specific change of policy or practice. Deleting all reference to "minority" or "race" and instead referring to "segments of the juvenile population" minimizes an important issue, is offensive to many, and hinders efforts to remedy the disparate treatment of minority youth.

We urge the committee to ensure that young people in the juvenile justice system are afforded the rights and protection they are due. Young people, with few exceptions, should be treated as juveniles rather than as adults in the justice system. Careful judicial evaluation should precede each decision about whether a juvenile offender is placed in a locked facility, a community-based program, or a residential program.

Prosecutors should not be the sole decision-makers in determining whether to prosecute juveniles 16 and over as adults. It is our firm belief that judges can best determine whether adult court is appropriate. It is essential that judges maintain this function in juvenile cases.

We urge you to support these recommendations and to work with your colleagues to make sure there is needed reform in the juvenile justice system that focuses on prevention and maintains the core protections for youths in trouble.

[*Note:* The statement supplied for the record entitled "The Consequences of Transfer," by Donna M. Bishop, University of Central Florida and Charles E. Frazier, University of Florida, is in the files of the House Judiciary Committee's Subcommittee on Crime.]

PREPARED STATEMENT OF THE KENTUCKY GOVERNOR'S CONFERENCE ON BEST PRACTICES IN JUVENILE JUSTICE

KEYNOTE ADDRESS BY JUDGE FRANK ORLANDO (RET.), FT. MITCHELL, KY

Good Afternoon Ladies and Gentleman:

This conference is to explore best practices in the administration of programs for children at risk, and who have found their way into the Juvenile Justice System usually through a court proceeding. My remarks today will deal with practices and procedures in the Administration of Justice for children charged with a violation of the law, criminal or status.

In the brief time I have I will try to give you an understanding of how we in America came to establish what today are called Juvenile Courts.

1. Introduction

In 1999, we will observe the centennial of the first juvenile court. Most of us know it was founded in Chicago, Illinois by a group of reformers in reaction to the deprivation and abuse suffered by children in the adult criminal justice system. These reformers believed that children and adolescents were fundamentally different from adults, and that non-penal environments were necessary for most delinquent children in order to steer them to productive and crime-free lives. The founders of the Illinois Juvenile Court were more concerned about the nature of the services provided to delinquent, neglected, and abused children than they were about the juvenile court's procedural fairness. The burgeoning influence of the social sciences, which gave hope that children's lives could be changed for the better through enlightened social service interventions, influenced these reformers and motivated them to develop a separate system for treating adolescent offenders. In other words, these children were in a sense sick and needed treatment by the State.

There is one other anniversary worthy of note in any discussion of the juvenile court, but which are rarely mentioned in any discussion of this kind. We know about the U.S. Supreme Courts ruling in *1966 Kent vs U.S.* and in *1967 In Re Gault*. But on March 18, 1963, 36 years ago, the Court announced its historic decision *Gideon* v *Wainright* where it said that due process of Law (The 14th AMD. and 6th AMD.) meant that poverty alone could not deprive a criminal defendant of the right to a lawyer.

I will *briefly* touch on three places in the development of the juvenile court over the last *100 years*. Each place can be a 2-hour lecture in itself so I hope I will challenge you enough to revisit the times and than use your own initiative to help decide whether in 1999 we are having a *"celebration or a wake"* (1998 CJJ Annual Report).

Much of my presentation is devoted to an examination of the history of our legal system practices and procedures in dealing with children accused of a law violation or anti-social behavior.

1. Where we were,
2. Where we are,
3. and I will leave where we go to your decision with brief references to what I perceive for the next 100 years.

A hundred year's ago, about the same time the Juvenile Court was born, George Santayana perceptively noted, "Those who cannot remember the past are condemned to repeat it." Another more modern philosopher—Yogi Berra once commented—"It's Da Ja Vu all over again." The question then is do we remember why the Juvenile Court was created or are "we condemned to repeat the past?" Is there more to the past then social reformers wanting to treat their precious children in places of social reform? I would add to Santayana's perception—accuracy—how accurately do we remember the past?

An examination of history seems to say there were several reasons. Some for the benefit of children and some to their detriment. You can decide if practices today are "Da Ja Vu" all over again. The other concerns were:

Jury nullification, the process by which jurors acquit an apparently guilty criminal defendant rather than impose a disproportionately severe sanction, began to play a significant part in the acquittal of children charged with crime in the middle part of the 1800's, to the dismay of prosecutors. A significant number of juries elected to acquit juvenile defendants at least based in part on concerns about imprisoning youngsters with adult criminals. Out of these concerns came the early *Houses of Refugee Act*. With the express purpose of placing children convicted as vagrants I.E. status offenders or of criminal acts and keep them until 18 and work them in slave labor conditions.

Courts regularly found that regardless of the lack of any due process, children could be confined by Courts and even parents, for almost any behavior. In one such case, a father sought a *Habes Corpus* release of his involuntary committed daughter of 15 for no crime. In denying the right the court said

> *"To this end, may not the natural parents, when unequal to the task of education, or unworthy of it, be superseded by the paren patriae or common guardian of the community."*

This decision is credited with the introduction of *parens patriae* to justify informality and a lack of due process where children are concerned.

Sounds familiar. The U.S. Supreme Court in or *Schall* v *Martin*, (1984) made a finding that the State can subject a child to preventative detention for his or her own good. 1838 & 1984—Da JA Vu or just good law? You decide, I have my own opinion.

The concern of social reformers was growing and in *1870* the Illinois Supreme Court held it unconstitutional to confine in a Chicago reform school a youth who had not been convicted of criminal conduct or afforded legal due process, rejecting the parens patriae reasoning, the Court said:

> *"Even criminal's cannot be imprisoned without due process of law ... Why should minors be imprisoned for misfortune?" O'Connel* v. *Turner* 1870.

In 1899, the Illinois legislature adopted the pioneering Illinois Juvenile Court Act. The Act was in part a response to a growing incidence of jury nullification, to concerns about industrial schools in Chicago, and to the reform-based opposition to the placement of youths in facilities with adults. Although the Act did not radically change procedures in the existing courts that now would be sitting as juvenile

courts in adjudicating cases involving children, it did continue the *parens patriae* philosophy to govern such cases.

The Act was unique in that it did:

1) Create a special court, or jurisdiction, for neglected, dependent or delinquent children under sixteen;
2) Define a rehabilitative rather than punishment purpose for that court;
3) Establish a policy of confidentiality for records of the courts to minimize stigma;
4) Require the separation of juveniles from adults when incarcerated or placed in the same institution, as well as barring the detention of children under twelve in jails together; and
5) Provide for the informality of procedures within the court.

The court's procedures in Illinois were indeed quite brief and superficial, frequently consisting of the judge gaining the trust of the child through informal conversation and then asking the youth directly about the offenses charges. As can be imagined, witnesses were seldom required to establish the child's guilt.

By 1925, the Juvenile Court spread very rapidly to 48 states and the D.C., as did the absence of due process. Treatment and rehabilitation was the foundation for the juvenile court, due process was not. Lawyers were foreign to the system as was bail, witnesses, etc. We diagnosed and treated, some children were actually helped depending on where they lived and their economic status, but mostly we used large training schools off in the boonies. Kids were separate, but little "treatment" took place.

We have always known that children are different, but we continue the mistakes of the past. Huge warehouses for juveniles and prisons for others with little due process in site. Finally, in 1966 the United States Supreme Court addressed the fundamental fairness of the juvenile court's process in a case from the District of Columbia. (*Kent, 1966*) The court concluded in that case that Morris Kent was denied his due process rights by the failure of the trial judge to hold a hearing prior to transferring the sixteen-year old to the adult court for trial, and without giving Kent's lawyer access to the social information relied on by the court. In addition, the judge had failed to articulate his reasons for waiving his jurisdiction over the young man.

The court concluded that there must be an opportunity for a hearing on the issue of transfer to the adult court, that there must be a meaningful right to representation by counsel, that counsel must be given access to the social records considered by the juvenile court in making its decision, and that the court must accompany its waiver order with a statement of the reasons for transfer.

Justice Fortas went further in sounding the warning that the court was in jeopardy. Abe Fortas, Gideon's lawyer was now Justice Fortas. Questioning the depravation of basic constitutional due process, especially assistance of legal counsel as provided in *Gideon*. Questioning the value of a separate court for children accused of crimes Justice Fortas said for the US Supreme Court:

> *There is evidence in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children. (Kent v. US, 383 US 541, 555–556).*

A year after the decision in Kent, in 1967, the President's Commission on Law Enforcement and the Administration of Justice, appointed by President Lyndon Johnson, issued its *TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME*, expressing serious reservations about many of the fundamental premises of the juvenile justice system, its effectiveness, and its lack of procedural safeguards. The Task Force urged a new approach to juvenile delinquency, a greater emphasis on voluntary services, and most importantly a complete rethinking of the courts jurisdiction over status offenders. The concept of "net widening" surfaced and the Commission was very clear that the juvenile court had become the surrogate and dumping ground for schools, child welfare, neglectful parents, churches and many other community social services agencies. They recommended the net of social control by the court be tightened and these agencies accept their responsibility for these at-risk children.

The Commission validated the reservations about the court and system and recommended mandates to keep non criminal issues out of the retributive delinquency system and its many harmful institutions.

The same year, 1967, many of the questions raised by Kent and the President's Committee were addressed by the Supreme Court again written by Justice Abe

Fortas in the historic decision of *In Re Gault*. The major findings were that for the first time the Court ruled that juveniles are persons within the meaning of the 14th amendment and that our constitution required procedural regularity and the exercise of care implied in due process. The court through Justice Fortas said:

"The condition of being a boy does not justify a kangaroo court."

We are now at 1967 on our way to the centennial. It took 67 years to apply basic constitutional rights to children—*Gideon*, Lawyers, *Kent*—due process and lawyers here too before you take away my status as a child. Then *Gault* said due process was for every person, which included children.

The only exception was the issue of jury trials, but in another case, it said states could provide them by law or in their constitutions. Justice Fortas said call it *paren patriae*, a civil proceeding and where you send children The Happy Valley Farm. *Deprivation of liberty by any name or process requires due process protections.*

Some would say that following *Gault*, we had several years of progress. Constitutional safeguards and *parens patriae* worked together. States were improving their systems and much of the original promise of the 1899 social reformers was becoming a reality. [Ref. Miller, OJ, NED].

In 1974 under the leadership of Senator Birch Bayh the Juvenile Justice and Delinquency Prevention Act created a unique partnership for children between the States and the Federal Government. The Act created OJJDP, committed federal resources to the States to create and implement progressive programs. It clearly recognized the immense value and absolute authority of the States; and local communities to develop and implement goals and policies for their state.

It mandated, jail removal of children, the removal of status and non-offenders from institutions and placed a mandate to reduce the over representation of minority children in secure institutions.

The progressive movement continued into the 1980's—but then based on high profile cases involving violent offenses, the disintegration of families, proliferation of guns to children and a vastly changing political climate we began a fast retreat in the 90's from success and forgot how different the child's mind is from adults.

As the juvenile court approaches its 100th birthday, however, it future is less secure than at any point in its history. Recent increases in juvenile violent crime have led politicians to "reform" the court by passing laws which minimize the court's jurisdiction, including a new wave of laws that transfer more juveniles, at younger ages, into the adult criminal system. In most cases, these youthful offenders, once transferred, are treated no differently from adults. In this rush to punish and incapacitate youthful offenders, policy makers have given less and less weight to the developmental perspective that led to the creation of separate courts and treatment interventions for juveniles.

It is important to keep this increase in perspective. The overwhelming majority of arrests for juvenile crimes are for nonviolent offenses. In 1994, only six out of every 100 juvenile arrests were for violent crimes. Moreover, the majority of violent crime arrests (56%) were for assault, a broad category which often involves the threat of harm rather than actual harm and encompasses shouting matches and schoolyard fights. Finally, since reaching its peak in 1994, arrests of teenagers for violent crimes have dropped significantly in the past two years. In 1995, FBI data showed a 2.9% decrease in juvenile violent crime arrests. In 1996, according to the FBI, juvenile arrests for violent crime dropped another 9.2%.

The lesson learned here is any reform involving children is very fragile. They are vulnerable to the changing political climate and have the least say in their own defense.

So we arrived in the decade of the 90's and the centennial year of the juvenile court. What do we know? We know that:

- The founders and researchers ever since know that children and adolescent behavior is very different.
- That the court perceived was to look at the individual as the focal point of the process not the offense.
- That our goal was to change the behavior, if possible, not destroy the child.
- That a special court and process was necessary to do this all in the name of our concern for the children of America or the 7–9% whoever see a juvenile court.
- The process is constitutional as long as the mandates of *Gideon*, *Kent*, & *Gault* all clearly articulated by the U.S. Supreme Court are observed and followed.

So what do we have today? In the opinion of many who study this issue, there is a somewhat schizophrenic aspect to the Court's appearance after nine decades of conflicting policies and court decisions.

Dean Roscoe Pound of the Harvard law School has been quoted as saying that:

> *"The juvenile court has become like "the illegitimate issue of an illicit relationship between the legal profession and the social work profession, and now no one wants to claim the little bastard."*

From this standpoint remember at least I hope any lawyers present remember the Supreme Court in *McKeiver* v. *PA*, where the Court concluded that the right to a jury trial should not be extended to delinquency proceedings and then sounded this ominous warning.

> *"If the formalities of the criminal adjudicative process are to be superimposed upon the juvenile court system, there is little need for its separate existence. Perhaps that ultimate disillusionment will come one day, but for the moment we are disinclined to give impetus to it. "(Justice Harry Blackmun, 1971)*

So where are we in the centennial year? Are we having a wake or a celebration? The great philosopher Yogi Berra has one answer—he said:

> *"When you come to a fork in the road—take it."*

We are at that "fork." Some want to go left, some want to go right, but many are stuck at the fork.

There are some that would argue that the day of disillusionment has finally arrived and that the juvenile court should be completely transformed or totally abolished. No state has done the latter, but major transformations have occurred. Some of this, especially efforts to sentence more juveniles to death, and tendencies to try significantly more youth in adult criminal courts or to detain juveniles again in adult jails, appears to be in complete indifference to the punitive history of a century ago when the juvenile court was created, remember the words of George Sayntana. It also seems to be a reaction to perceived epidemics of violent juvenile crime, a reaction induced at least in part by the excessive hype and irresponsibility of the media and in disregard of the major drops in juvenile violent behavior in the past three years. (*False Images? The News Media and Juvenile Crime, 1997*)

This group lead by the research and writings of Professor Barry Feld, feel the line between the criminal process and the juvenile delinquency process has disappeared. Others at the fork including me feel it is very blurred.

On the other side of the fork are those who want to preserve the *parens patraie* system and fix it. "Treatment." Then we have those driving the system today.

Punishment. More transfers, bigger and bigger institutions, especially the for-profit ones. Where profit not the program is first and last priority.

The ever widening net of the court: truants, school problems and continuing increases in misdemeanor and other low-risk offenses in spite of declining crime by children.

We will punish you into submission and then turn you back into society to wreak the havoc we have taught you.

Dam the research—Punish you little bastards!

In conclusion, let me say:

There is hope that consensus can be reached and compromise achieved in the best interest public safety, children's rights and redirection of behavior.

Here are three things I feel are absolute if we are going to get beyond the "fork" and then I will refer you to two places I feel have very worthwhile policy directives.

First, we need to balance system. No I am not talking about Restorative Justice and the Balanced Approach even though over half the States have adopted this process in their State law, no one has yet implemented the systematic process change it requires.

For those interested in this and I believe it is a sound policy. I would refer you to Dr. Gordon Bazemore and his OJJDP funded B.A.R.J. Project.

I am talking about the balance of responsibility for the juvenile Court, its jurisdiction, its goals and responsibility and authority.

The 1974 Juvenile Justice Act struck that balance. The 1990's Federal Legislation does not. S–10 now reintroduced by Senator Hatch as S–254, which represents the ever-increasing federal control over state courts and crime policy.

You and I must tell Congress that they can give advice on innovative ideas, provide funding and evaluate results, but it is up to the States to decide how to operate state courts. No matter how much money they dangle through things like the JAIBG Program, this is telling you try more children as adults and build more adult

like prisons. Ignore the crime data and the research that says their policy is bogus rhetoric.

Second, close the door or the net of the court to behavior its not equipped or able to deal with. The schools and other social services agencies must stop avoiding their responsibility to deal with these children and families and use the vast resources they have to be creative and successful. Beware the ever-expanding assessment center concept—the widest net we have. "Youth Service Bureaus" of 25 years ago—Da Ja Vu.

The court and its advocates must take back the authority to decide if a child should be transferred based on evidence, amenability and the conviction of a criminal offense. The New Mexico process, it is the best available example today.

Fourth, stop starving *Gideon*. It has been 36 years since *Gideon & Gault* made legal representation an absolute right. Today less than half the children appearing in juvenile court have legal counsel and when they do it is mediocre at best. The *ABA* research publication *A call for Justice* validates this sad statical fact.

The term "War on Crime" is a commonly used metaphor to justify reductions in funding for indigent defense, especially where children are concerned.

Those accused of crimes, especially children, are entitled to legal aid by competent counsel in the same way the sick are entitled to medical aid.

Starving *Gideon* not only robs children of a basic right it starves America's sense of justice.

Lawyers, including judges, prosecutors and defense counsel must understand that the sixth Amendment says a person is entitled to effective assistance of counsel. With the convincing research we have on the cognitive thinking ability of a child, do we really believe you can effectively assist a child in an adult criminal procedure when he or she cannot comprehend what is going on and the jeopardy he or she is in. And further, can you as an attorney do this without the assistance of a competent mental health person who understands a child's mind and its capacity?

It is really time to more fully explore the competency defense on an individual basis in a legal proceeding, not based on arbitrary offense based decisions.

In a criminal proceeding, especially where children are at risk, it is not who wins or loses, but a search for truth and that justice shall be done. For those who want to get around the fork and find consensus, those were my thoughts and suggestions. I would recommend two other publications for your consideration.

1. *A Celebration or A Wake*, much of the history I have referred to today came from this document. 1998 Report, Coalition of Juvenile Justice by Professor Robert Sheppard.
2. Symposium on the Future of the Juvenile Court, published by the Northwestern University School of Law in 1997

This is the publication I would most highly recommend to anyone seeking justice for children and the court of the 21st century.

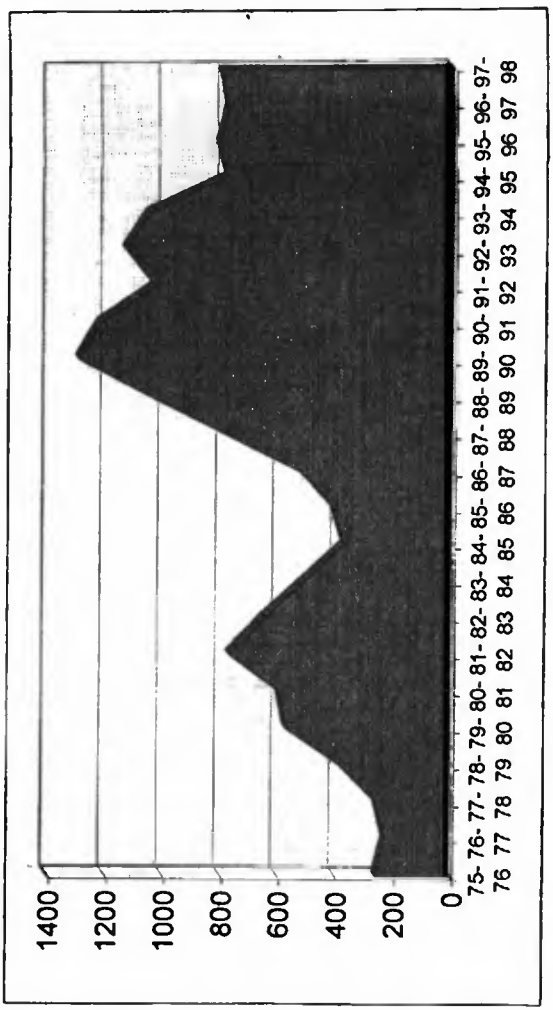
Here four academic scholars debate the future of juvenile courts. Professor Barry Feld and Professor Stephen Morse, who write convincingly in favor of abolishing the Juvenile Delinquency Court and creating a unified criminal justice system.

Professor Thomas Grisso and Professor Elizabeth Scott, child development and legal experts who write convincingly about the behavioral traits of youthful offenders and why we must preserve a separate system of justice for children.

The final article pulls it all together. Writing as a practitioner who represents children charged with serious crimes in juvenile and in criminal court, Professor Thomas Geraghty draws upon his experience of representing children, as well as the same rich interdisciplinary work relied upon by Morse, Feld, and Scott and Grisso to suggest a way of reconceptualizing and reinvigorating juvenile courts. Professor Geraghty argues:

> *"That the challenges to the legitimacy of juvenile courts posed by Morse and Feld must be taken seriously and constructively because they focus the attention of juvenile court "preservationists" on the difficult and sustained work that must be done if a separate juvenile court system is to survive. The challenges are constructive because they are based upon valid criticisms of past and present assumptions about the nature of the children who appear in juvenile court. The challenges are fair because juvenile courts have historically failed to provide procedural protection, effective interventions and treatments, and measured and consistent imposition of moral responsibility. The model of a specialized court for delinquent children and specialized treatment and rehabilitation interventions for children holds more potential for doing justice to children and protecting society than does a unified juvenile/criminal justice system."*

Thank you for your time, and as the Juvenile Justice Coalition urges, "all who care about a just society for children should join together and find consensus for a celebration and a future for a new Juvenile Court."



Source
FLA Dept of Juv. Justice
Bureau of Research & Statistics

NCSL

News Release

NATIONAL CONFERENCE OF STATE LEGISLATURES

Date: March 11, 1999

Contact: Tracey A. Mills (202) 624-8667

State Legislator Urges Congress to Support State Efforts for Juvenile Justice Reform

"An overly prescriptive one-size-fits-all mandate could undermine the progress made in many states."

WASHINGTON, DC — In his testimony before the U.S. House Judiciary Committee, Connecticut State Representative Mike Lawlor urged Congress to make good choices in supporting state efforts to reform the juvenile justice system, and resist one-size-fits-all federal mandates that undermine states' progress.

"Virtually every state in our nation has made great strides in reforming its juvenile justice system," said Rep. Lawlor, chair of the Connecticut House Judiciary Committee and a member of the National Conference of State Legislatures' Law and Justice committee.

"What has typified reform in most states is the use of a range of sanctions, starting earlier than ever before, in the hope that children who show early signs of problem behavior can be diverted from a path that often leads to serious offenses and long-term incarceration, if not death."

Rep. Lawlor used his own state as an example of juvenile justice reform. "Connecticut established an elaborate array of programs consisting of a combination of sanctions and treatment options that have proven to be effective."

"In my state, graduated sanctions in juvenile justice is not simply a matrix of specific penalties applied to specific offenders with specific records. It is a menu of choices available to judges, prosecutors, probation and police officers, teachers and others to use at their discretion, depending on the circumstances of each case. We have developed a flexible approach geared toward immediate intervention and proven results. Not every 15 year-old car thief with a record of several arrests needs to be sent to prison. Not every nine year-old first time truant needs to be simply brought home to his parents, " he said.

Emphasizing the uniqueness of each state, Rep. Lawlor cautioned against attaching inflexible national mandates to federal grants, "Each state has developed a different juvenile justice system over the years. Reform must be specifically tailored to what exists in the state already and not to a national standard which has no relation to institutions, practices and values in the various states."

For a copy of the testimony or more information, contact Tracey Mills at 202/624-8667 or tracey.mills@ncsl.org.

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[*Note:* A copy of the statement submitted for the record, "Estimating the Costs of the Resumptive Transfer and Mandatory Graduated Sanctions Provisions of H.R. 3," by Barbara Allen-Hagen, presented at the American Society of Criminology Meeting on November 12, 1998, is in the files of the House Judiciary Committee's Subcommittee on Crime.

COUNTY COMMISSIONERS'
ASSOCIATION OF OHIO,
Columbus, OH, February 9, 1999.

SHAY BILCHIK, *Administrator,*
U.S. Department of Justice,
Office of Juvenile Justice
and Delinquency Prevention, Washington, DC.

DEAR MR. BILCHIK: I enjoyed speaking with you recently at the National Association of Counties' (NACo) Justice and Public Safety Steering Committee annual retreat in Hershey, Pennsylvania. I particularly enjoyed your comments on early and quality child development and providing adequate programs and services within the juvenile justice system.

In your comments you stated, "if your county's juvenile delinquency is up and cases of abuse and neglect are up, chance are that your county's current programs are not working." I agree with you wholeheartedly. As a policy analyst working with Ohio's counties, I have seen this problem in some of our counties. I know that one way OJJDP has tried to help counties improve their juvenile justice programs and services is through the use of block grants such as the Juvenile Accountability Incentive Block Grants (JAIBG). Ohio is excited about the JAIBG program. However, we have concerns with the disparity in the allocation of JAIBG funds.

JAIBG's twelve program areas are provided primarily by the counties in Ohio. Hence, you would expect that the majority of Ohio's JAIBG funding would be directed to our counties. However, this is not the case. As I stated to you in our brief conversation, Ohio counties only received 34% of the JAIBG 1998 allocation. This is a result of a flawed JAIBG funding formula. The formula places too much emphasis on non-juvenile justice expenditures and uses Part 1 violent crimes which unfairly creates a funding disparity for counties.

We ask that OJJDP work with NACo and take a second look at the formula. If Ohio's counties are going to begin providing improved juvenile justice programs and services, it is essential to receive an adequate share of Federal funding support. I know that counties in other states share our concerns. I have enclosed another copy of the handout I gave you at the conference regarding the JAIBG funding disparity in Ohio.

I welcome the opportunity to speak to you or a member of your staff about this issue. If you have any questions or concerns please phone me.

Sincerely,

MICHAEL R. TOMAN, *Policy Analyst,*
County Commissioners Association of Ohio.

cc: Edwin Rosado, Director, NACo Legislative Affairs
Don Murray, Justice and Public Safety, NACo
John Dowlin, Ohio NACo Representative, Hamilton County
Dorothy Teater, Ohio NACo Representative, Franklin County
Jane Campbell, Ohio NACo Representative, Cuyahoga County
Reed Madden, Ohio NACo Representative, Greene County
Roger Tackett, Ohio NACo Representative, Clark County
Ohio Congressional Delegation
Ohio Juvenile Judges Association

JUVENILE ACCOUNTABILITY INCENTIVE BLOCK GRANTS (JAIBG)
"The Formula For Distribution And Why It Does Not Work For All States"

PURPOSE OF JAIBG

The purpose of JAIBG was to create a new block grant program designed to promote greater accountability in the juvenile justice system. The grants are to be used to provide assistance to state and local governments in developing programs in the 12 program areas which include:

- Construction of juvenile detention or correctional facilities, including training of personnel.
- Accountability-based sanctions programs.
- Hiring of judges, probation officers, and defenders and funding of pretrial services.
- Hiring of prosecutors.
- Funding of prosecutor-led drug, gang, and violence programs.
- Provision of technology, equipment, and training programs for prosecutors.
- Probation programs.
- Gun Courts.
- Drug Courts.
- Information-sharing systems.
- Accountability-based programs for law enforcement referrals or that are designed to protect students and school personnel from drug, gang, and youth violence.
- Drug testing (including interventions) for juveniles in the juvenile justice system.

In Ohio and in many other states these 12 program areas are primarily provided by counties. Thus, it would seem to make sense that counties get the majority of funds.

FORMULA OF DISTRIBUTION FOR JAIBG

- JAIBG funds are allocated to states based on their population of people under the age of 18 living in the state.

- JAIBG funds are distributed to local units of government using a formula that combines justice expenditures and the average annual number of Uniform Crime Report Part 1 violent crime arrests reported by each unit of local government. Generally the formula is based on the ratio of:

  (1) 2/3 Justice Expenditures
  (2) 1/3 Part 1 Felony Crimes Reported

- A unit of local government must qualify for a minimum of $5,000 in order to be eligible for a JAIBG award.

THE PROBLEM WITH THE DISTRIBUTION FORMULA

In General:

- Expenditure data used to determine JAIBG allocation is not based specifically on "Juvenile" criminal justice expenditures. Expenses considered for the purposes of JAIBG include: (1) police protection; (2) corrections (3) judicial and legal services. Including police protection expenses works against particulary urban counties.

- Similar to the Local Law Enforcement Block Grant Program (LLEBG), the Part 1 violent crimes portion of the JAIBG formula works against counties. Part 1 crimes are primarily reported by the city and there is a great deal of double counting as two felonies committed by one offender is counted twice.

In Ohio:

- Rural counties in Ohio average award was 62% of the countywide allocation. The formula favors small counties, as the cities within those counties have fewer expenditures and the Part 1 crimes are spread throughout the county (See Table 1, Table 2 and Table 3).

- Urban counties in Ohio average award was only 27% of the countywide allocation. The formula works against large counties, as the cities within those counties have large police protection expenditures and the majority of reported Part 1 crimes. This is similar to the LLEBG Disparity problem (See Table 1, Table 2 and Table 3).

- Ohio counties received 34% of the total statewide JAIBG allocation, while cities received the remaining 66%. As population increased the county portion of the JAIBG countywide allocation decreased (See Figure 1).

WHAT SHOULD WE DO TO AMEND THE JAIBG FORMULA PROBLEM

- Ask Congress for the NACo recommended two-tiered formula. The JAIBG awards should be allocated to counties based on the number of Part 1 crimes countywide. The aggregate county award is then distributed between units of local government, including the county, based on "juvenile" justice expenditures.

- Ask Congress for the justice expenditure portion of the formula to be based on "juvenile" justice expenditures associated with JAIBG's 12 program areas.

- Ask your state to allocate the state's portion of the formula to counties. The state is allowed to keep 25% of the JAIBG funds for statewide programs associated with the 12 program areas. Ohio counties asked the state to use a portion of the state funds for counties that were not eligible because they did not qualify for at least $5,000.

- Build in a protection for the smallest counties to receive at least some JAIBG funds.

TABLE 1: COUNTY PORTION OF JAIBG AWARD

1	Van Wert	30,464	$	5,332	50%	$ 10,762
2	Union	31,969	$	9,896	100%	$ 9,896
3	Clinton	36,416	$	-	0%	$ 14,275
4	Champaign	36,019	$	10,908	100%	$ 10,908
5	Williams	36,956	$	11,963	100%	$ 11,963
6	Guernsey	38,024	$	-	0%	$ 8,566
7	Ottawa	40,029	$	8,324	100%	$ 8,324
8	Preble	40,113	$	13,468	100%	$ 13,468
9	Logan	42,310	$	17,122	100%	$ 17,122
10	Auglaize	44,585	$	12,372	100%	$ 12,372
11	Shelby	44,915	$	11,958	100%	$ 11,958
12	Knox	47,473	$	11,190	100%	$ 11,190
13	Ashland	47,507	$	11,461	100%	$ 11,461
14	Crawford	47,870	$	11,340	100%	$ 11,340
15	Pickaway	48,255	$	9,410	100%	$ 9,410
16	Darke	53,819	$	11,877	100%	$ 11,877
17	Huron	56,240	$	15,559	100%	$ 15,559
18	Athens	59,549	$	10,565	62%	$ 17,120
19	Seneca	59,733	$	11,196	53%	$ 20,993
20	Lawrence	61,834	$	9,177	100%	$ 9,177
21	Sandusky	61,963	$	10,366	48%	$ 21,617
22	Washington	62,254	$	13,358	100%	$ 13,358
23	Marion	64,274	$	6,858	35%	$ 19,723
24	Hancock	65,536	$	7,973	44%	$ 17,993
25	Delaware	66,929	$	15,450	63%	$ 24,593
26	Ross	69,330	$	10,189	43%	$ 23,799
27	Belmont	71,074	$	15,082	100%	$ 15,082
28	Erie	76,779	$	18,784	52%	$ 36,404
29	Jefferson	80,296	$	8,863	41%	$ 21,562
30	Scioto	80,327	$	8,357	40%	$ 20,987
31	Geauga	81,129	$	17,532	100%	$ 17,532
32	Muskingum	82,068	$	16,833	56%	$ 30,273
33	Tuscarawas	84,090	$	21,105	100%	$ 21,105
34	Miami	93,182	$	9,256	40%	$ 23,265
35	Ashtabula	99,821	$	8,455	28%	$ 29,668
36	Wayne	101,461	$	18,838	70%	$ 26,789
37	Fairfield	103,461	$	13,623	36%	$ 37,859
38	Columbiana	108,276	$	20,300	100%	$ 20,300
39	Allen	109,755	$	33,228	34%	$ 98,113
40	Wood	113,269	$	31,528	71%	$ 44,355
41	Warren	113,909	$	28,691	100%	$ 28,691
42	Medina	122,354	$	22,038	69%	$ 31,998
43	Richland	126,137	$	21,181	22%	$ 97,541
44	Licking	128,300	$	23,855	50%	$ 48,015
45	Greene	136,731	$	26,838	43%	$ 61,924
46	Portage	142,585	$	32,099	66%	$ 48,736
47	Clark	147,548	$	23,291	21%	$ 109,676
48	Clermont	150,187	$	43,336	82%	$ 53,016
49	Lake	215,499	$	45,670	48%	$ 94,507
50	Trumbull	227,813	$	24,411	41%	$ 59,067
51	Mahoning	264,806	$	23,763	17%	$ 142,921
52	Lorain	271,126	$	46,594	40%	$ 116,425
53	Butler	291,479	$	32,613	23%	$ 141,236
54	Stark	367,585	$	46,904	29%	$ 161,634
55	Lucas	462,361	$	94,498	24%	$ 392,863
56	Summit	514,990	$	78,367	34%	$ 232,497
57	Montgomery	573,809	$	164,292	36%	$ 457,291
58	Hamilton	866,228	$	229,628	34%	$ 667,961
59	Franklin	961,437	$	172,578	21%	$ 836,666
60	Cuyahoga	1,412,140	$	330,250	25%	$ 1,323,986
	TOTAL	10,076,179	$	2,022,019	34%	$ 6,029,777
				34%	62%	100%

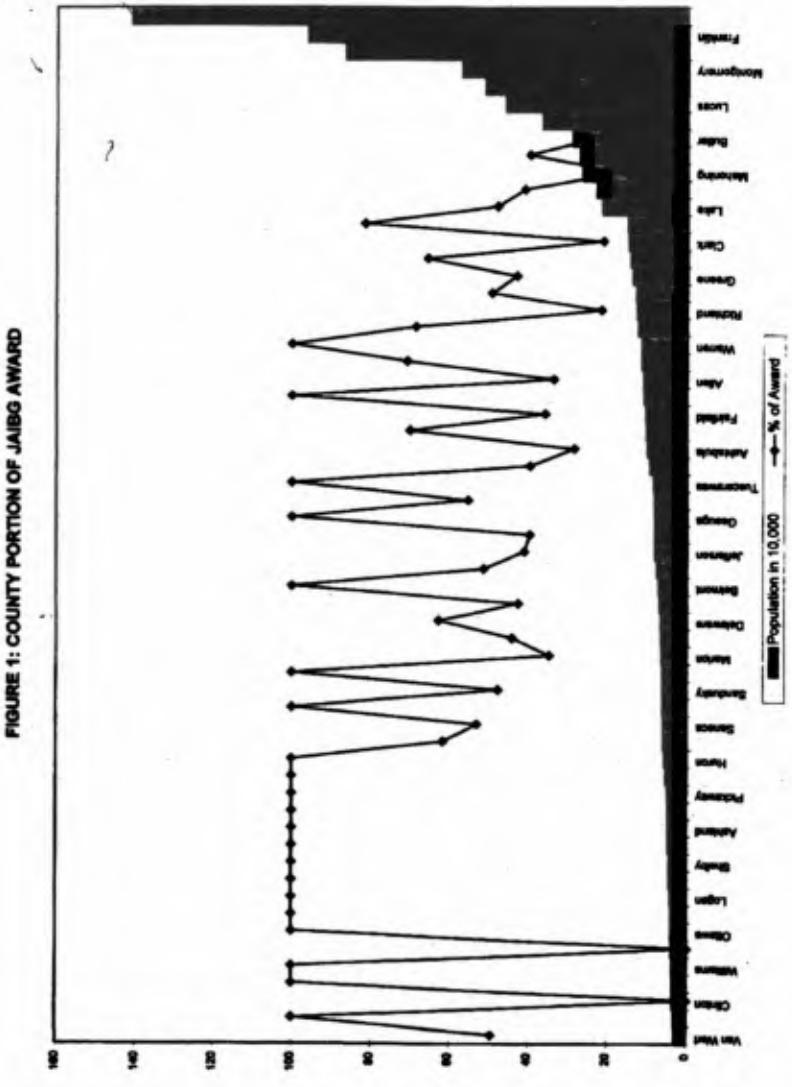
TABLE 2 AND TABLE 3: SEVEN SMALLEST AND SEVEN LARGEST COUNTIES COUNTY PORTION OF JAIBG AWARD

TABLE 2: SEVEN SMALLEST COUNTIES

	COUNTY	Population	County Portion	County Total	County %
1	Van Wert	30,464	$ 5,332	$ 10,762	50%
2	Union	31,969	$ 9,895	$ 9,895	100%
3	Clinton	35,415	$ -	$ 14,275	0%
4	Champaign	36,019	$ 10,908	$ 10,908	100%
5	Williams	36,956	$ 11,963	$ 11,963	100%
6	Guernsey	39,024	$ -	$ 9,566	0%
7	Ottawa	40,029	$ 9,324	$ 9,324	100%
	Total	249,876	$ 47,422	$ 76,693	62%

TABLE 3: SEVEN LARGEST COUNTIES

	COUNTY	Population	County Portion	County Total	County %
54	Stark	367,585	$ 46,904	$ 161,634	29%
55	Lucas	462,361	$ 94,486	$ 392,863	24%
56	Summit	514,990	$ 79,387	$ 332,497	24%
57	Montgomery	573,809	$ 164,292	$ 457,291	36%
58	Hamilton	866,228	$ 229,628	$ 667,961	34%
59	Franklin	961,437	$ 172,578	$ 836,665	21%
60	Cuyahoga	1,412,140	$ 330,250	$ 1,323,986	25%
	Total	5,158,550	$ 1,117,525	$ 4,172,897	27%



[*Note:* The progress report entitled "The Juvenile Detention Alternatives Initiative," by the Annie E. Casey Foundation dated December 1997, and the booklet entitled "Program Accountability Measures for Juvenile Justice Commitment Programs, FY 1997–98," prepared by the Bureau of Data and Research, Florida Department of Juvenile Justice, dated February 1999, are in the files of the House Judiciary Committee's Subcommittee on Crime.]

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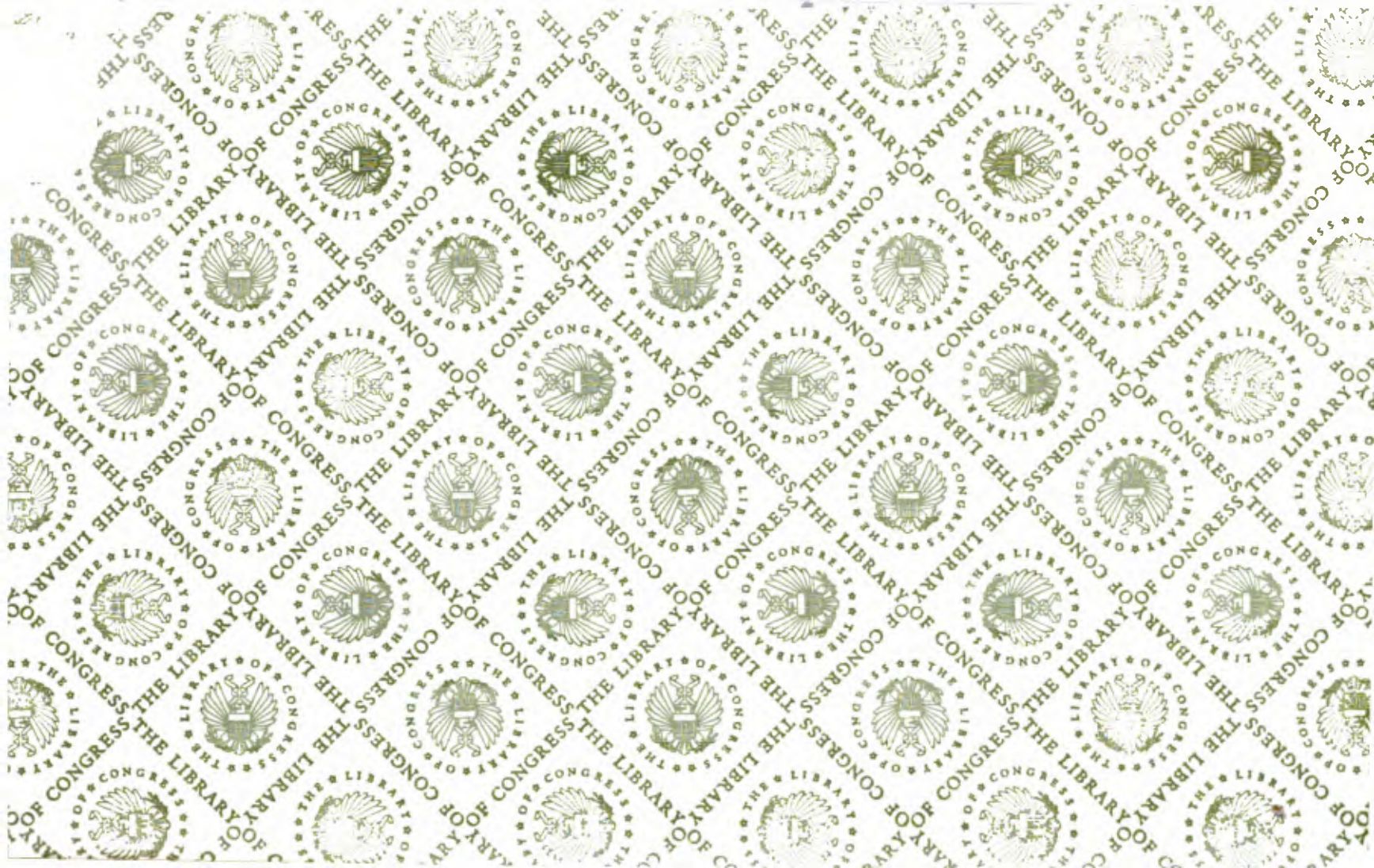
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